SUBJECT INDEX

Page

1. Statement of Facts 1
2. This Activity Did Not Involve Criminal Prosecution 3
3. Consent 6
4. The Reason for the Visitation 8
5. Appellant Was Not Present During Instructions of January 10th 10

TABLE OF AUTHORITIES CITED

Cases

Miranda v. State of Arizona, 384 U.S. 436 6

Codes

Welfare and Institutions Code, Section 1550.6 4

S. F. No. 22429

IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA

BENNY MAX PARRISH,
Petititoner and Appellant,
vs.
THE CIVIL SERVICE COMMISSION OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, et al.,
Respondents.

APPELLANT'S REPLY BRIEF TO AMICI CURIAE

Hearing Before Supreme Court After Decision of District Court of Appeal, First Appellate District, Division One.

---

1. Statements of Facts

The facts upon which this appeal is based are contained in the decision of the District Court of Appeal, First Appellate District, Division Two, contained in Volume 242 A.C.A., page 665. There was no motion made before the District Court of Appeal for a rehearing after said decision and, therefore, the facts, as stated in said opinion, must be deemed to be correct.

Rules on Appeal, Rule 29(b) reads in part as follows:

> "On petition for hearing the Supreme Court will not examine the record for error, or inquire into the correctness of the facts stated in the opinion unless the petition shows: (1) That material facts were omitted from or incorrectly stated in the opinion of the District Court of Appeal and that the alleged omission or other inaccuracy was set forth in a petition for rehearing and not corrected by the District Court of Appeal; or (2) that substantial legal issues raised in the briefs were not considered in the opinion, and that the failure to consider them was set forth in a petition for rehearing."

The opinion of the District Court of Appeal states, at page 668, as follows:

> ". . . This particular mass operation to determine eligibility was to be conducted by pairs of social workers: the worker known to the recipient would present and identify himself at the front door of the home of the recipient, indicate the exact purpose of the call and request admission. If the request for entry was denied, the workers were directed not to enter the home. If the entry was allowed, they were directed to investigate in the same manner as they had on other occasions for the ANC program.
>
> If the worker was admitted into the home, before proceeding into any other part of the

> house he was to ask permission to do so from the recipient. The second worker was to be statitoned at the back door or other exit; if the worker at the front door was admitted, he was then to go through the house and let his partner in by the other exit."

And, at page 669, the Court stated:

> "The primary purpose of the mass operation of January 13, 1963, was to identify and find the unauthorized males. The secondary purpose was to make the usual kind of administrative investigation relating to eligibility and to find out how much food there was in the home, the condition of the home and children, how the recipients were faring with their monthly checks, etc. As to the food and money, the workers were instructed to ask the recipient how much was left of the grant. Any unauthorized persons found in the home were to be identified and asked to explain their presence. If given permission to enter and permission to search, the workers were instructed to thoroughly search the premises, including looking in and under the beds."

2. This Activity Did Not Involve Criminal Prosecution

The brief of Amici Curiae dwells at great length on the fact that the purpose involved in this unscheduled visit was criminal prosecution. This reasoning is refuted by the opinion of the District Court of Appeal and by the instructions given to the Welfare Department employees prior to the unscheduled visitation. This check on recipients' eligibility is made mandatory by law. Welfare and Institutions Code Section 1550.6 reads as follows:

> "The County is responsible for the eligibility of all recipients of aid under this chapter and shall as often as necessary redetermine eligibility of all recipients to receive aid."

And in the regulations of the State Department of Social Welfare, it is provided by Section C-O 15.10 as follows:

> "The County shall make such reinvestigations as are necessary to insure payment only to eligible children, to insure payment of aid in the correct amount, to assist families to meet needs as fully as possible, and to assist families in making maximum use of their resources and capacities. . . ."

And in State Regulation C-O 15.20, it is provided:

> "All circumstances of the child and his parents which are subject to change shall be reinvestigated.
>
> The reinvestigation shall include an interview with the parent or the person responsible for the child, preferably in the home, within a three months' period prior to the completion of the reinvestigation. A home visit shall be made at least once annually."

The Appellate Court found, as did the Civil Service Commission and the Superior Court, that this operation was undertaken by the County pursuant to the statutory provisions requiring a responsible and specific redetermination of eligibilty. The Appellate Court, in its opinion, at page 672, stated:

> "Here, appellant and other social workers were repeatedly instructed that they were to carefully explain the purpose of their call and to seek permission or consent to search, with the clear implication that they were not to threaten automatic discontinuance of benefits or to use other coercive tactics. If appellant had failed to follow these instructions, he would likewise have been subject to disciplinary action. Although the facts here presented are unique and present many problems, we must assume for the purpose of this discussion that the instruction would have been followed and consent obtained. Under these circumstances, we are not prepared to conclude, in the absence of a specific factual showing to the contrary, as in the *Johnson case*, that the ANC recipients had no alternative but to submit to a search and that it was not possible for their social workers, who strictly complied with orders, to obtain valid consent."

The Court, after reviewing the State Act setting up the Aid to Needy Children Program, stated that the primary purpose of the program was to insure adequate food and clothing to the minor children and to afford them a good moral climate, and that such public funds allocated to this program should not be siphoned off by unauthorized males residing in the home.

And at page 675, stated:

> "We see nothing inherently wrong with making weekend eligibility calls which experience has demonstrated disclose widespread fraudulent misappropriation of public funds and the deprivation of the children for whose benefit the ANC program was instituted."

It must be remembered that some 400 families in Alameda County, who were recipients of the Aid to Needy Children funds, were involved in this unscheduled visit and not one of them came forth to object to the manner in which this visitation was made. There is no evidence in the record that any recipient complained that any of his constitutional rights were violated by the action of the County of Alameda in carrying out the duties imposed by law.

3. Consent

It is alleged by Amici Curiae that the fact that appellant was a welfare worker obligated the recipient to comply with an order to search the premises and further that the welfare worker, prior to requesting admission, must advise the recipient of his constitutional rights. In this regard, Amici Curiae cities *Miranda* vs. *State of Arizona*, 384 U.S. 436. It is submitted that the *Miranda case* has nothing to do with the problem before this Court. That case decided the question as to whether a statement obtained from a defendant while in custody and deprived of his freedom of action was admissible in court without the defendant being advised of his constitutional rights prior to such statement being taken and has nothing to do with the questioning of a citizen who is not in such a situation. At page 445, the Court stated:

> "The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody and deprived of his freedom of action."

And at page 477, the Court stated:

> "The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any way. It is at this point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial system recognized in some countries."

And again at page 477, and 478, the Court stated:

> "General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law en-

> forcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present."

Stress is made by Amici Curiae on the fact that a special relationship existed between appellant and the recipients of aid and that such special relationship precluded a lawful consent from being obtained. If such relationship did preclude a consent on the part of recipient to discuss matters in connection with eligibility with his welfare worker, the whole program upon which aid to needy children is founded would be meaningless. Appellant has testified that even he has visited recipients in the evening and on Saturdays. That he was up to six months behind in checking eligibility of those recipients for whom he was responsible. If Amici Curiae is correct, the Welfare Worker would be unable to carry on any relationship with the recipient which would be meaningful in any manner, let alone one which would be for the protection of the child involved which, of course, is the sole purpose of the program.

4. The Reason for the Visitation

A great deal has been stated by both Amici Curiae and Appellant concerning the harassment of the poor person. The import is that the poor person is being made the scapegoat in this case. This unannounced visitation was set up by the Board of Supervisors after a great deal of thought and a great deal of direction, as shown by the testimony of Supervisor

Razeto before the Civil Service Commission. A Citizens' Welfare Committee was established by the Board of Supervisors, at the recommendation of the Grand Jury.

> "The jury was highly critical of the Welfare program in the county and reported several flagrant cases of fraud in the Aid to Needy Children operation." (Civil Service Commission R.T. 91, Line 25 to Civil Service Commission R.T. 92, Line 1.)

And further Supervisor Razeto stated:

> ". . . And I know a little bit of the problems, particularly on weekends, and we also know that because our shop is closed on weekends, there is a tendency for some of these so-called absent fathers to show up and become very active on weekends. Therefore, the ease by which this program is abused, why we thought we should call for some remedy, and since they're unscheduled visits during the week are absolutely in order, we felt perhaps that over the weekend we might be able to help find some of these absent fathers and perhaps give us an opportunity to see how they are managing the public money that they receive, whether they buy food and milk, and bread for these children, how they are managing the household. After all, they are using public funds, our money, and my money, and it is sort of a trust, and I am very concerned to see we have as honest and efficient an aid administration as

possible. I assure you there was no intention of harassing anyone, or imposing upon anyone. The only thing is we know human nature being what it is, the ease of abuse of these problems, the fact that many of these fathers return on weekends, we might as well have some unscheduled visits, house calls—no intrusions, no searches, no raids, those were invented by some people for reasons best known to themselves, but our whole purpose is to first locate an absent father, men who these ladies say they don't know where they are, and secondly, to see on weekends, when they don't expect a social worker, how they are managing the home, and how they are using the public funds. . . ." (Civil Service Commission R.T. 98, Line 22 to Civil Service Commission R.T. 99, Line 22.)

5. Appellant Was Not Present During Instructions of January 10th

The record of the Civil Service Commission shows that on January 3, appellant was told that he might be requested to participate in the unannounced visitation and that on the 9th of January, he was requested to go and refused. (Civil Service Commission R.T. 348, Lines 21 to 22)

He did not make a list of cases to be used in the visitation. (Civil Service Commission R.T. 378, Lines 22 to 25)

He did not attend the meeting of January 10 for the only ones who attended that meeting were the welfare workers who were going on the visitation of January 13. Therefore, when Amici Curiae discusses the statements that were made at the meeting of January 10 and the effect that those statements had relative to this matter, the record refutes the proposition that appellant took any of the statements made at the meeting of January 10 into consideration as a reason for refusing to abide by the directive of his superior. As a matter of fact, the record conclusively shows that appellant refused the directive of his superior a number of days before the 10th and refused it in writing on January 9th.

It is respectfully submitted that the opinion of the District Court of Appeal correctly set forth the facts and the law and that the action of the Board of Supervisors of the County of Alameda was legal in every respect.

Dated: October 13, 1966, Oakland, California.

Respectfully submitted,

J. F. COAKLEY
District Attorney, in and for
the County of Alameda,
State of California

By RICHARD H. KLIPPERT
Assistant District Attorney

Attorneys for Respondent

1 Civil No. 22556

1 Civil No.

22,556

In the Supreme Court

OF THE

State of California

Benny Max Parrish,

Petitioner and Appellant,

vs.

The Civil Service Commission of the County of Alameda, State of California, et al.,

Respondents.

APPELLANT'S PETITION FOR A HEARING BY THE SUPREME COURT,

After Decision by the District Court of Appeal, State of California, First Appellate District, Division Two, and Numbered Therein 1 Civil No. 22,556

County of Alameda

Honorable Wayne P. Burke, Judge

Albert M. Bendich,
Coleman A. Blease,
2890 Telegraph Avenue,
Berkeley, California,
Attorneys for Appellant and Petitioner.

Pernau-Walsh Printing Co., San Francisco

Subject Index

Page

Introduction 2

Statement of the case 4

Statement of the facts 7

The purposes of the surprise search 8

How the mass search was to be made 10

Issues to be discussed 15

Argument 17

A. An order to conduct a mass, general, exploratory search of randomly-selected homes for evidence of crime or forfeiture of property is absolutely prohibited by the Fourth Amendment. Such conduct by an official agency cannot be justified under any constitutional theory. Therefore, the order at bar is void and the theory of waiver or consent irrelevant 18

B. Assuming that there is no such absolute prohibition, and that the order was not utterly unjustifiable, but that it was prima facie unconstitutional, the defense of waiver or consent is relevant. Well-established Fourth Amendment principles require those asserting the waiver of fundamental rights to meet stringent constitutional burdens of proof and persuasion. The respondents have not claimed consent, much less attempted to prove it. Thus, since the requisite burdens of proof and persuasion have not been met, appellant's dismissal is constitutionally unjustified, and he should be reinstated 26

C. Assuming that respondents had urged the defense of consent: Where the uncontradicted evidence discloses that the persons whose homes are to be searched are wholly dependent upon welfare benefits for the necessities of life, are lacking all but a minimal formal education (and that obtained largely in segregated Southern Negro schools), are largely members of the most oppressed racial and ethnic minorities, are psychologically depressed, are basically subservient to and com-

Page

pliant with assertion of authority, are lacking in skills and ability with which to support themselves and their minor children, are divorced or separated and thus deprived of other financial and emotional support, and are aware that a refusal to permit a search of their homes for evidence of crime and as a check on eligibility for welfare benefits will probably result in a suspension or termination of their benefits; and where the social worker seeking admission to make the search has authority to initiate a termination of benefits, and where such worker cannot say, within the instructed policy of his welfare department that a refusal to permit entry will not likely result in a loss of economic benefits and can only state that such loss would not automatically occur—in such circumstances no constitutionally valid waiver or consent may be found 34

Conclusion 49

Table of Authorities Cited

Cases Pages

Boyd v. United States, 116 U.S. 616 (1886) 32, 33, 41

Carnley v. Cochran, 369 U.S. 506 (1962) 31
Casteneda v. Superior Court, 59 Cal. 2d 439 (1963) 28

Dragna v. White, 45 Cal. 2d 469 (1955) 28

Eaton v. Price, 364 U.S. 263 19
Elfbrandt v. Russell, 86 S. Ct. 1238 (1966) 26
Entick v. Carrington, 19 How. State Tr. 1029 33

Frank v. Maryland, 359 U.S. 360 (1959) 19

Griswold v. Connecticut, 14 L. Ed. 2d 510 .... 14, 20

Haley v. Ohio, 332 U.S. 596 32
Hall v. St. Helena Parish School Board, 197 F. Supp. 649 (D.C. E.D. La., 1961), affd., 368 U.S. 515 18
Honig v. United States, 208 F. 2d 916 (8th Cir. 1953).... 20

Johnson v. Zerbst, 304 U.S. 458 .... 28, 30, 31
Judd v. United States, 190 F. 2d 649 (D.C. Cir. 1951)..... 28
Johnson v. United States, 333 U.S. 10 42

Miranda v. Arizona, 34 L.W. 4521 (1966) 3, 28, 31, 32, 33, 40, 41, 43, 44
Mulkey v. Reitman, 64 A.C. 557 (1966) 18

People v. Burke, 47 Cal. 2d 45 21
People v. Fahner, 213 Cal. App. 2d 535 21
People v. Martin, 45 Cal. 2d 755 21
People v. McLean, 56 Cal. 2d 660 21
People v. McGhee, 196 Cal. App. 2d 458 21
People v. Michael, 45 Cal. 2d 751 20
Pierre v. Arizona, 306 U.S. 354 (1939) 27

Speiser v. Randall, 357 U.S. 513 (1958) 22

Wirin v. Parker, 48 Cal. 2d 890 20

Yick Wo v. Hopkins, 118 U.S. 356 43

Codes

	Pages
Welfare and Institutions Code:	
Section 1577	26
Section 1963	26

Constitutions

United States Constitution:	
Fourth Amendment	16, 18, 27, 34, 35, 41
Fifth Amendment	41
Fourteenth Amendment	18

Texts

28 U. of Chi. L. Rev., 664, 701 (1961)	22
Federal Handbook Transmittal No. 77 (1966)	48
Wald, Law and Poverty, 1965, Report to the Nat'l Conf. on Law and Poverty, 6	32

1 Civil No. 22,556

In the Supreme Court

OF THE

State of California

Benny Max Parrish,
Petitioner and Appellant,
vs.
The Civil Service Commission of the County of Alameda, State of California, et al.,
Respondents.

APPELLANT'S PETITION FOR A HEARING BY THE SUPREME COURT,

After Decision by the District Court of Appeal, State of California, First Appellate District, Division Two, and Numbered Therein 1 Civil No. 22,556

County of Alameda

Honorable Wayne P. Burke, Judge

To the Honorable Roger J. Traynor, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

The appellant hereby petitions for a hearing by the Supreme Court of the State of California after a decision by the District Court of Appeal, First Appellate District, Division Two, rendered on May 31, 1966. The opinion of the District Court of Appeal is reported in 242 A.C.A. 665, and a copy thereof is appended hereto.

INTRODUCTION

This case presents questions of fundamental constitutional import concerning basic aspects of civil liberty.

These questions have been generated by respondents' firing of the appellant, Benny Parrish, for his refusal, on constitutional, moral and social-work grounds, to participate in Alameda County's notorious "operation bedcheck" in January, 1963.

"Operation bedcheck" was to be (and later became) a surprise, pre-dawn, Sunday, mass, general and exploratory search for evidence of fraud and other misconduct which swept through the homes of some four hundred families in Alameda County subsisting on Aid to Needy Children benefits. The evidence was to be sought for purposes of securing criminal prosecutions and forfeitures of benefits in a general attempt to "crack down" on what was imagined, by the Supervisors of the County, to be an undue amount of undetected "welfare frauds" in the ANC population.

The primary evidence to be seized was that which would indicate the presence of so-called "unauthorized men" in the recipient's homes. To this end, the searchers were to look in and under beds, behind sofas, shower curtains, closet doors, and so on. Hence the not inappropriately militaristic sobriquet, "Operation bedcheck," which the press immediately applied to this unfortunate assault upon the dignity and privacy of that portion of our population least equipped to resist it.

Appellant's constitutional objections to participating in "operation bedcheck" were dismissed out of hand by respondents. The Department of Welfare refused to consider them seriously; the Civil Service Commission sustained objections on grounds of lack of relevance to appellant's attempts to introduce evidence going to the constitutionality of "operation bedcheck"; indeed, respondents have insisted throughout that no constitutional issues whatever have been involved and that the case was a simple question of ordinary insubordination for refusal to obey a reasonable order.

Not until the case reached the District Court of Appeal were any of appellant's constitutional objections given serious consideration, and even there, unfortunately, they were badly misconceived. Thus, for example, the District Court reversed the long-standing constitutional principle requiring "high standards of proof for the waiver of constitutional rights," strongly reaffirmed within the past month by the Supreme Court. *Miranda v. Arizona,* 34 L.W. 4521, 4532 (1966).

While it is always unfortunate when a judicial opinion creates a doctrinal conflict in an area of fundamental constitutional freedoms, the opinion of the District Court is particularly unfortunate in that, for the first time, an appellate Court has lent judicial sanction to such truly totalitarian invasions of privacy such as "operation bedcheck" involved; practices callously insensitive to human dignity and profoundly destructive of our most fundamental constitutional values; practices that hitherto have been held in precarious check, at least to some degree, by the absence of judicial approval and by their almost universal condemnation on constitutional and policy grounds by civil liberties and civil rights organizations such as the NAACP, CORE, ACLU, AJC and the newly emergent Welfare Rights Organizations; professional social work organizations such as the NASW; Governor Brown's Welfare Study Commission; and scholars in the fields of social work and constitutional law.

If the opinion below is not to create major confusion regarding fundamental principles of constitutional protection; if it is not to create invidiously discriminatory and indeed worse-than-second-class standards of official conduct towards millions of poverty-stricken Americans; if it is not to give judicial sanction and open the flood-gates to assaults upon the poor; if it is not to encourage those forces intolerant of constitutional restraint and hostile to the historic cry for human dignity for all; then this Court should grant this petition for a hearing and reconsider the issues presented.

STATEMENT OF THE CASE

The appellant, Benny Max Parrish, was permanently employed as a Social Worker II, as a caseworker in the Aid to Needy Children program, in the

Department of Welfare of the County of Alameda, State of California. This position was within the classified civil service of the County. On January 11, 1963 the appellant was ordered by Harold Kehoe, Director of the Department of Welfare of the County of Alameda, to take part in a mass, pre-dawn, surprise search, primarily for evidence of fraud, of the homes of recipients of benefits under the Aid to Needy Children Program, to be carried out on Sunday, January 13, 1963, commencing at 6:30 A.M. The appellant refused to obey this order on stated constitutional and other grounds, submitting a written summary thereof on January 10, 1963. His employment was thereupon terminated, effective January 11, 1963, by the Director of Welfare solely upon the ground of appellant's alleged insubordination for refusal to comply with the stated order. Appellant's dismissal was approved by resolution of the Board of Supervisors of Alameda County on January 15, 1963.

Appellant duly appealed his dismissal to the Civil Service Commission of Alameda County. Following hearings, the Commission, on June 17, 1963, rendered its decision, in a written opinion, affirming the dismissal. The Commission made findings of fact and conclusions of law in support of its decision. The only facts found by the Commission were: that on November 20, 1962 the Board of Supervisors of the County of Alameda had adopted a motion "That it be the policy of the Board of Supervisors to request the Welfare Director to schedule a series of unscheduled visits to welfare families similar to 'Operation Weekend' as conducted in another County"; that pursuant thereto the Welfare Director planned a series of unscheduled visits; that a series of unscheduled visits was scheduled for Sunday, January 13, 1963; that the appellant was requested as a Social Worker II to participate in the unscheduled visitations; that the appellant refused; that appellant offered a written set of constitutional and other reasons for his refusal. As conclusions of law from these findings of fact the Commission found, without stating any supporting reasons or findings, that the appellant was guilty of insubordination and that his dismissal was lawful.

Appellant then petitioned the Superior Court of Alameda County for a writ of mandamus directing the Commission to reinstate him. After trial, the Court denied the petition and affirmed the dismissal; notice of entry of judgment was filed on June 19, 1964. (C.T. 47.)

The appellant duly filed a notice of appeal to the District Court of Appeal. After written argument,[1] the District Court of Appeal, First Appellate District, Division Two, rendered a decision on May 31, 1966 affirming appellant's dismissal.

---

[1] The American Civil Liberties Union of Northern California filed an *amicus* brief in support of appellant. We are authorized by Marshall Krause, American Civil Liberties Union staff counsel, to state that but for the fact that the American Civil Liberties Union *amicus* brief (which argued that the mass search operation was unconstitutional and that consent was incapable of being free in the coercive conditions of this case) was virtually ignored by the District Court, and contains the same arguments the American Civil Liberties Union would present to this Court, it would have filed a separate brief in support of the instant petition for hearing. The only reason for the Union's decision not to file such an *amicus* brief is that it would be purely redundant; instead, we are authorized to state that the American Civil Liberties Union desires its District Court *amicus* brief to be considered as also in support of appellant's petition for hearing.

STATEMENT OF THE FACTS

The crucial facts in the record are not in dispute. Indeed, that evidence is wholly uncontradicted.[2]

An exhaustive summary of the facts will not be set forth here; such a statement can be found in appellant's opening brief before the District Court of Appeal. Here, we shall confine ourselves to a brief statement of the essential facts as clearly revealed in the record.

In January, 1963, the Alameda County Welfare Department ordered its personnel to make a mass, surprise search of the homes of some four hundred families receiving Aid To Needy Children (hereafter ANC) benefits. The great majority of these families were to be chosen wholly at random from an ANC population which had already been carefully refined and winnowed by the removal of any recipients who were under the slightest suspicion of fraudulent behaviour. Those recipients were to have been referred to the fraud investigation unit on instructions from the top administrators of the Welfare Department prior to the selection of target families for "operation bedcheck." Therefore, the random selection was to be made from a group of ANC families actually determined rather than presumed to be wholly innocent and beyond suspicion. A minority of the recipient families to be searched were to be chosen from a different group, also in a random fashion, composed of families whose basic eligibility had not been re-determined by the Welfare Department for more than six months preceding the projected date of the bedcheck raid. This latter group was styled the "suspect"[3] group. (See, Appellant's Opening Brief, pp. 14-16, 19-20.)

---

[2] The opinion of the District Court of Appeal is wrong and misleading not because it misstates the basic underlying facts of record, but rather because it draws incorrect inferences from those facts and because it makes incorrect assumptions based upon what it refers to as "implications" from those facts. In addition, as we shall demonstrate in another section of this petition, the District Court of Appeal's opinion is wrong and misleading because of its failure to apply, or its misapplication of, fundamental constitutional principles in evaluating the facts of this case and in resolving the issues presented.

THE PURPOSES OF THE SURPRISE SEARCH

The primary purpose of the mass search operation was to "crack down" on welfare fraud, in the words of the County Supervisors, by going after evidence of the presence in the recipient's homes of so-called unauthorized men. The secondary purpose was to check on basic eligibility for continuing aid. Both varieties of evidence were understood to involve punishable offenses and such evidence was to be used both for purposes of criminal prosecution and also for forfeiture of all or part of ANC grants as a technique of combating "fraud" and removing families from the welfare roll.

---

[3] It should be noted that the respondents use the term "suspect" in two ways. First, in the criminal sense. Such suspects were, as is shown in the text, weeded out of the sample. But "suspect" was also used in the unfamiliar sense to designate persons whose basic eligibility had not been checked for a six-month period. Such "suspects" were included in the sample. (See, Appellant's Opening Brief, pp. 14-15.) Certainly, the inclusion of such "suspects" can in no way detract from the claim that the entire selection of homes to be searched was made at random.

Whether the label attached to the purposes of the mass search operation describes them rhetorically as "eligibility checks" or as "routine administrative searches" does not alter the fact that evidence of guilt leading to criminal punishment and forfeiture of benefits is what the search was for. (See Appellant's Opening Brief, pp. 39-40.)

There was a third purpose which was added by the head of the Welfare Department (as distinguished from the primary and secondary purposes which had been selected by the Alameda County Board of Supervisors). This was the purpose of whitewashing the administration of the Welfare Department—what the opinion of the District Court of Appeal refers to as providing a "better overall statistic relating to the county's total case load of about 6,000 recipient families." (242 A.C.A. at 668.) This third purpose was to be accomplished by searching the homes of persons known to be beyond suspicion of fraudulent misconduct so that evidence of their innocence would statistically overwhelm any evidence of fraud or other criminal conduct or malfeasance which the search might turn up. Such a "better overall statistic" would, of course, save the heads of the Welfare Department from charges of maladministration and negligence regarding alleged fraud in the welfare-recipient population. After these purposes had been defined, the method of carrying out the search operation was discussed, and large meetings of Welfare Department personnel were convened for the purpose of being instructed in search methods and techniques. (See Appellant's Opening Brief, p. 16.)

HOW THE MASS SEARCH WAS TO BE MADE

The social workers attending the meetings were instructed that, after eliminating from their caseloads those recipients as to whom some suspicion of wrongdoing existed in the social worker's mind, two groups of ten recipient families were to be selected by the social workers from their case loads. The first group of ten would embrace families whose basic eligibility had not been reviewed for six months. If there were less then ten such families, then a correspondingly larger number would be selected from the second group. The second group embraced a purely random selection of the remaining families in the social worker's caseload up to the number of twenty. (R.T. 61:17-26.)

The workers were also instructed that commencing at 6:30 a.m., Sunday, January 13, 1963, they were, in teams of two, to approach the target homes. The regular social workers were to go to the front door and knock, while their partners were to position themselves at the back doors of the homes. When the doors were opened, the social workers were to explain the purpose of the knock, ask to be permitted to search the house, and upon receiving permission, proceed to the back door and let their partners in to assist the search. (Appellant's Opening Brief, pp. 16-17.) The search for the unauthorized man was to be thorough: beds were to be stripped; closets, bathrooms, corners, nooks and crannies were to be checked. Even cupboards and refrigerators were to be combed for evidence of guilt. (Appellant's Opening Brief, pp. 17-18.)

The foregoing is what the social workers and other Welfare Department personnel were told concerning the method of operation to be followed on January 13th. Questions arose as to whether benefits would be cut off from the recipients who might not consent to allow the search. The answer was that the benefits would "not automatically" be stopped, but that the matter would be looked into. (R.T. 77:1-17; R.T. 184: 17-23; R.T. 267:11-26; R.T. 309:11-14; R.T. 341:6-17.) The past pattern was one where refusal to consent to a search by members of the Welfare Department's fraud detection unit (social workers had never before been asked to conduct such searches in Alameda County, and the fraud detection workers who did normally engage in surprise night searches had never before participated in a mass operation (R.T. 84:4-8; 142:6-9)) commonly resulted in termination of benefits to the recipient family (R.T. 341:6-17). The record does not indicate that such terminations were ever made "automaticallly." But it does clearly establish, and indeed the evidence which does so is uncontradicted, that all parties concerned in the contemplated mass search—the administrators, the fraud investigators, the social workers and the ANC recipients—knew that this was the pattern, that refusal to consent to be searched resulted commonly in termination of ANC benefits. Clearly, this pattern was not countermanded or in any way even placed in question during the briefing sessions.[4]

With these facts in mind, the appellant, Benny Parrish, submitted a written statement listing five reasons for his refusal to obey the order to participate in the mass search. (R.T. 349:10-18.) His statement, dated January 10th, read:

> I will not agree to make early morning home calls on recipients in my caseloads on Sunday, January 13, 1963, or on subsequent weekends for the following reasons:
>
> (1) Such calls are an indication of presumptive guilt of all recipients and tend to degrade them
>
> (2) Such calls are an invasion of the privacy of recipients

---

[4] The opinion of the District Court of Appeal does not in any way conflict with this statement of fact. The opinon is entirely correct in saying that in terms of these facts there is a "clear implication that they [the social workers] were not [verbally] to threaten automatic discontinuance of benefits . . ." (p. 672); but, when the opinion goes on to add, "or to use other coercive tactics," it has simply left the realm of fact and entered the realm of judgment and evaluation. Apparently, for the District Court of Appeal, if an ANC recipient were to answer a 6:30 a.m. Sunday knock on the door by her social worker asking for permission to search her home for the presence of an "unauthorized" man or other incriminating evidence of fraudulent conduct, and if she were to inquire whether her ANC benefits would be cut off if she were to refuse such permission, the accurate answer, "not automatically, the Department will have to look into it," would not be coercive. This is not the place to question the reasonableness of such an evaluation. We merely wish to make it clear that the *facts*, as opposed to their significance and the mode of their evaluation, are not in dispute.

(3) Such calls are incongruous to the rehabilitative goals of the ANC program

(4) Such calls are at odds with the indoctrination program of this Agency

(5) My job classification does not indicate that I must put in mandatory overtime in this manner.

(See Appellant's Opening Brief, pp. 19-22.)

The shocking and dismaying fact is that this statement was viewed by Parrish's superiors in the Department as irrelevant and quixotic and given virtually no consideration at all so far as its content was concerned. (See Appellant's Opening Brief, pp. 20-22; R.T. 349:10-22; R.T. 350.) Had Parrish been willing to avoid participating in this search operation on the ground that his eyesight (he is a partially blind man) would be inadequate to the task, as he was invited to do (see e.g. R.T. 45:21-25), he would have been gladly excused. But his principled insistence on consideration of his constitutional objections was dismissed out of hand as, indeed, he was himself dismissed from the Welfare Department for "insubordination."

Later, in the course of his hearing before the Civil Service Commission, when Parrish had the opportunity to discuss his reasoning, he described why he considered himself constitutionally and morally bound to resist participation in "operation bedcheck." In a context where their fundamental right of privacy had already been questioned and threatened by the widely publicized plans to launch the search operation, and where "recipients know that if they refuse to admit a worker, they probably will be discontinued, that recipients have been discontinued" for such refusal in such a context, permission to allow entry and search, Parrish asserted, is forced, not freely given. (R.T. 351:15-17.) Moreover, the coercive pressure to "consent" is very great; it is so intense, Parrish testified, that even a woman who has a man in the home with her, knowing that he is the very object of the search[5] will nevertheless feel constrained to accede to the request to enter and search rather than refuse. This is so, Parrish explained, because "if a recipient has a man in the home and she admits a worker, she can perhaps explain this away; but there is no explaining away if they refuse them at the door; so the threat is there, the recipient realizes it, the workers realize it . . ." (R.T. 351:20-25.)

Finally, as Parrish testified, as the record reveals, and indeed, as this Court may judicially notice, the ANC recipients are as a class wholly dependent upon ANC benefits for the necessities of life, almost wholly lacking in formal education, very largely members of the most oppressed racial and ethnic minorities, psychologically depressed, and therefore subservient to and compliant with virtually every assertion of authority. (See, generally, Aid to Needy Children Intensive Services Unit Research Project, part of petitioner's Exhibit No. 1 in evidence.) Being thus deprived and disadvantaged, ANC recipients, Parrish testified, "need some reassurances that they can get out and compete, and in this situation the social worker is the only one who can give it to them." The primary goal of the ANC program is, after all, Parrish continued, the *rehabilitation* of these recipients from a condition of hopelessness, apathy, fear and dependence to one where they can exercise independent judgment and make free choices and decisions. To assert, in the circumstances of this case that a bare request for permission to enter these persons' homes and search them is more than the merest legal fig leaf covering the naked unconstitutional power actually thrust at them is therefore to mock not only at fundamental guarantees of civil liberty but at basic facts. For, as a matter of incontrovertible and uncontradicted fact, the persons who were to be asked to consent to be searched and could not freely and voluntarily decide to waive their fundamental constitutional right to privacy any more than the Negro children in pre-*Brown* segregated schools could "equally" with the white schoolchildren freely pursue their educations.

---

[5] It should be noted that while the presence of a man in the home may well be wholly unexceptionable and not by any means necessarily incriminating, yet under these gratuitously imposed circumstances such an innocent human association becomes unavoidably embarrassing to the man, the woman and the children and destructive of values at the core of constitutionally protected privacy. Cf. *Griswold v. Connecticut*, 14 L. Ed. 2d 510.

ISSUES TO BE DISCUSSED

The overriding question is whether the order by the Alameda County Authorities directing social caseworkers to take part in a surprise, mass, bed-check search of the homes of a randomly selected sample of their client-recipients of Aid to Needy Children

Benefits in the dark of Sunday morning, January 13, 1963, for the primary purpose of securing evidence of the crime of fraud was in violation of the constitutional guarantees of the Fourth and Fourteenth Amendments.

Other issues involved are:

A—Whether an order to conduct a mass, general exploratory search of randomly selected homes for evidence of crime or forfeiture of property is absolutely prohibited by the Fourth Amendment and whether, therefore, such conduct by an official agency cannot be justified under any constitutional theory thereby rendering the order in question void and the theory of waiver or consent irrelevant.

B—Whether, assuming there is no such absolute prohibition, and that the order in question was not utterly unjustifiable, it was not shown to be at least *prima facie* unconstitutional thus requiring that those asserting that fundamental constitutional protections have been waived by consent meet stringent constitutional burdens of proof and persuasion; and whether, inasmuch as respondents have not claimed waiver by consent, much less sought to prove it, they have not failed to satisfy the requisite burdens, a failure which, under well established Fourth Amendment principles, requires that appellant's dismissal be held constitutionally unjustified.

C—Assuming that respondents had urged the defense of consent, whether, in circumstances where the uncontradicted evidence discloses that the persons whose homes are to be searched are wholly dependent upon welfare benefits for the necessities of life, are lacking all but a minimal formal education (and that obtained largely in segregated Southern Negro schools), are largely members of the most oppressed racial and ethnic minorities, are psychologically depressed, are basically subservient to and compliant with assertion of authority, are lacking in skills and ability with which to support themselves and their minor children, are divorced or separated and thus deprived of other financial and emotional support, and are aware that a refusal to permit a search of their homes for evidence of crime and as a check on eligibility for welfare benefits will probably result in a suspension or termination of their benefits; and where the social worker seeking admission to make the search has authority to initiate a termination of benefits, and where such worker cannot say, within the instructed policy of his welfare department, that a refusal to permit entry will not likely result in a loss of economic benefits, and can only state that such loss would not automatically occur—whether in such circumstances any constitutionally valid waiver or consent may be found.

ARGUMENT

The order by Alameda County Authorities directing social caseworkers to take part in a mass bed-check search of the homes of a randomly-selected sample of their client-recipients of Aid to Needy Children benefits in the dark of Sunday morning, January 13, 1963, for the primary purpose of securing evidence of the crime of fraud violated the constitutional guarantees of the Fourth and Fourteenth Amendments.

A. AN ORDER TO CONDUCT A MASS, GENERAL, EXPLORATORY SEARCH OF RANDOMLY-SELECTED HOMES FOR EVIDENCE OF CRIME OR FORFEITURE OF PROPERTY IS ABSOLUTELY PROHIBITED BY THE FOURTH AMENDMENT. SUCH CONDUCT BY AN OFFICIAL AGENCY CANNOT BE JUSTIFIED UNDER ANY CONSTITUTIONAL THEORY. THEREFORE, THE ORDER AT BAR IS VOID AND THE THEORY OF WAIVER OR CONSENT IRRELEVANT.

In his reply brief before the District Court, the appellant argued that a consent or waiver, even though entirely voluntary, is not automatically a constitutionally viable justification for an otherwise unconstitutional search. The police power, it was argued, is not unlimited, and that among various specific limitations upon the power to search houses, is the proposition that an impermissible governmental end, such as a mass search for evidence of innocence, would preclude constitutional justification for search despite the presence of voluntary consent. The principle is that "No plebiscite can legalize an unjust discrimination", even one including those discriminated against. *Hall v. St. Helena Parish School Board,* 197 F. Supp. 649, 659 (D.C. E.D. La., 1961), affd., 368 U.S. 515. And see *Mulkey v. Reitman,* 64 A.C. 557 (1966).

The District Court of Appeal appears to assert the contrary, namely, that *any search whatever,* no matter what the purpose or circumstances of its execution, may be constitutionally justified given a valid consent. Indeed, the Court's opinion suggests that a wholly *"indiscriminate attempt"* to search a home can be constitutionally effective though "no prior suspicions or complaints concerning particular individuals or premises" have been made providing consent is present. (242 A.C.A. at 673; emphasis, the Court's.) But the Court's sole authority for this startling theory is a lone dictum, taken out of context, from a minority opinion in *Eaton v. Price,* 364 U.S. 263, a case *not* concerned with standards for criminal searches and, moreover, a case which makes it plain that searches for incriminating evidence or to work forfeitures must meet very different and higher standards than are required of administrative searches, such as were involved in *Eaton,* concerned only with public health. In *Frank v. Maryland,* 359 U.S. 360 (1959), a majority of the Court clearly distinguished between constitutional standards for searches involving incriminating evidence and other sorts of searches and make it plain that the categories are not to be confused.

The District Court theory would apparently sanction a police search of the randomly selected homes of Negroes for the purpose of demonstrating a believed higher incidence of crime among Negroes as a racial class, provided consent were obtained. Such a search would no doubt be for a purpose constitutionally prohibited by basic notions of equal protection. and due process. Nonetheless it would be encompassed within and sanctioned by the District Court's sweeping and monolithic rationale of consent.

It may be conceivable that "consent" through some sort of plebiscite might be claimed as authority for the constitutionality of a police practice of installing television cameras in the homes of citizens, selected at random, as a device to cut down on the incidence of criminal offenses. But it is inconceivable, even though many might welcome Big Brother, that such a claim has constitutional validity. A taxpayer's suit claiming that expenditure of public funds for such purposes is unconstitutional could hardly be defended by the state, even on the theory that the police had obtained voluntary individual consents from the persons in whose homes the television cameras were to be installed; nor, theoretically, would it strengthen Big Brother's case were certain persons to attempt to defend against such a suit on the ground that they liked being totally under such surveillance. Cf. *Wirin v. Parker,* 48 Cal. 2d 890; *Griswold v. Connecticut,* 381 U.S. 479, 516.

No such sweeping principle of unlimited police power has ever, to our knowledge, been asserted by any other Appellate Court in this land. Indeed, in each of the decisions cited below by the District Court as a case justifying a search by consent, there was an additional element of suspicion of crime linking the person to be interviewed or searched, as suspect or witness, to legitimate police business. See *Honig v. United States,* 208 F. 2d 916 (8th Cir. 1953) (suspect); *People v. Michael,* 45 Cal. 2d 751 (suspect);

People v. Martin, 45 Cal. 2d 755 (suspect); *People v. Burke,* 47 Cal. 2d 45 (suspect); *People v. Fahner,* 213 Cal. App. 2d 535 (suspect); *People v. McGhee,* 196 Cal. App. 2d 458 (suspect); *People v. McLean,* 56 Cal. 2d 660 (suspect). The existence of suspicion in these consent cases, though insufficient to establish probable cause, serves, it would seem, to satisfy the tacitly recognized requirement of a legitimate police objective.

All of this suggests, we believe, what is clearly understood in American law, though we are sufficiently civilized that the need to articulate it thankfully seldom arises, namely, that governmental power is always limited constitutionally, sometimes in ways that are beyond the waiver exception because public values are deeply involved and preclude any such claim or exercise of power.

We believe that exploratory searches come within this principle and that, for profound reasons of constitutional policy, there is no constitutional power to engage in such searches and that they, therefore, cannot be justified on any theory of waiver or consent. That is why the appellant, though he dwelt at length in his opening brief on the general warrant character of the mass, dragnet search of the homes of welfare recipients selected at random, did not there raise the issue of consent. For consent is irrelevant in that it cannot provide constitutional justification for an unconstitutional assertion of power. To assert the contrary would conflict with our constitutional theory of limited government. An unconstitutional assertion of power can hardly be justified by the acquiescence of its victims.

There are various policy reasons which underly an absolute denial of power to engage in a general exploratory search for evidence of crime. In the first place, injury to privacy can obviously occur in advance of the determination of consent. Here, for example, the intended raid and its "justifying" reasons were announced publicly. Merely being publicly made the object of such a search would serve to invade valued interests in reputation—"the damage to reputation resulting from an overt manifestation of official suspicion of crime." See Note: 28 U. of Chi. L. Rev., 664, 701 (1961). In addition, the welfare agents were to cover front and back doors of the targeted recipient homes in advance of any request for permission to enter. (R.T. 73:17-20.) Such an invasion of property and privacy, particularly in the circumstances of a surprise raid, obviously could not be consented to.

There is an additional policy reason. The determination of consent may involve individual factual questions subject to error and dispute. If consent were a justification for an exploratory search the valued right of privacy would be lost in the occasions for justification of its invasion. As the Supreme Court said in *Speiser v. Randall,* 357 U.S. 513 (1958):

> "There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party

> has at stake an interest of transcending value—as a criminal defendant his liberty—this margin of error is reduced as to him by the process of placing on the other party the burden of producing a sufficiency of proof in the first instance, and of persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt."

Similarly, where the transcendent value of privacy is involved, there should be placed on the party threatening an invasion of that value the burden of "producing a sufficiency of proof in the first instance" that there is some overriding governmental interest at stake which would justify the subjection of the individual to the risk of error in the fact-finding process on the issue of consent. To engage in police activities such as the questioning of witnesses or suspects would be to assert a traditionally acceptable justification for subjecting an individual to such a risk of error. But to engage in a general and exploratory search would be to assert no value justifying the risk to the transcendent value of privacy, except the unlimited power of government or the equally impermissible theory of guilt by association. And where, as here, the purposes asserted for the mass raid also included the constitutionally untenable purpose to prove persons *innocent* of criminal activity, there is an additional reason for claiming that the mass raid was in essence void and could not be justified by any theory of waiver or consent. (See also, Appellant's Reply Brief, pp. 16-19.)

There is an analogy to be drawn here to the treatment the Courts accord an exception to another fundamental right, freedom of speech. The clear and present danger exception cannot be applied *a priori*, in advance of the facts, to justify an abridgment of the right. The doctrine of prior restraint precludes such an application. The corollary is that freedom of speech is protected by this restricted applicability of the exception. The consent doctrine in the privacy field should be similarly circumscribed. Prior to the fact, it should only serve, legitimately, to *bolster* the right of privacy. This can be achieved by precluding its use where searches are anticipated except to prove incapacity of the group to be searched to consent freely, to be found in evidence of the coercive nature of the general atmosphere. For it is only such *general* conditions which can intelligently be assessed prior to the actual or attempted execution of *individual* searches. Indeed, it is only in the case of an individual search that facts proving consent can be obtained. The heavy presumption against waiver of fundamental rights should tip the scale in favor of freedom, absent proof of facts showing clear, intentional, intelligent, free and voluntary *individual* waiver by consent.

Lastly, the general exploratory search lends itself to a theory of "guilt by classification," a notion which is at war with the Fourth Amendment requirements of warrants and particularity. This notion of guilt by classification can be seen in the inception of the mass bed-check raid which was based on the assumption of widespread, undetected recipient fraud in the ANC population. As the District Court opinion put it, the order of the Board of Supervisors for the mass raid was based upon "'operation weekend' in Kern County, where a large number of welfare frauds had been discovered in this manner."[6] (242 A.C.A. at 667.)

The District Court of Appeal apparently subscribed to this theory as appropriate where public funds are at stake. As the Court said: "We see nothing inherently wrong with making weekend eligibility calls *which experience has demonstrated disclose*

---

[6] The results of the Kern County raid are contained in the so-called Bell Report which bears the official title, Kern County, *Operation Weekend;* it is contained as an appendix to the Reichert Report, part of Petitioner's Exhibit 1, in evidence (see Clerk's Transcript, p. 24); the Reichert Report may also be found as: Reichert, Relationships Between Welfare and Law Enforcement Agencies in California, in Cal. Welfare Study Comm'n Consultant's Reports pt. II, app. F, at 253, 335-342. There is a difficulty in computing the incidence of fraud found because of the confusing if not unintelligible way in which the statistics are presented. For example, there were 751 home calls made (p. 338) and 9 probable referrals to the District Attorney for (presumably) prosecution (p. 340), a statistical incidence of some 1.2 percent. However, if the number of clients not home (it is unclear whether this means number of doors not answered or number of clients in homes where doors were not answered (p. 338) and the number home but didn't answer (p. 338) figures are deducted from the total and the incidence related (again) to the number of referrals for probable fraud then the statistical incidence is less than 1.6 percent. If the investigations-still-pending category (p. 340) is added to the probable referral category and the total made the numerator then the respective fraud incidence statistics are approximately 4.0 and 5.4 percent. None of these percentages would seem to warrant the claim of the District Court opinion that "in Kern County a large number of welfare frauds had been discovered in this manner" unless the term "fraud" is (unreasonably) used to cover situations of ineligibility where no criminal intent was present.

widespread fraudulent misappropriation of public funds . . ."[7]

This notion of "guilt by classification" should be as foreign and antagonistic to our constitutional principles as is its sister theory of guilt by association, "which has no place here." *Elfbrandt v. Russell,* 86 S. Ct. 1238, 1242 (1966).

B. ASSUMING THAT THERE IS NO SUCH ABSOLUTE PROHIBITION, AND THAT THE ORDER WAS NOT UTTERLY UNJUSTIFIABLE, BUT THAT IT WAS PRIMA FACIE UNCONSTITUTIONAL, THE DEFENSE OF WAIVER OR CONSENT IS RELEVANT. WELL-ESTABLISHED FOURTH AMENDMENT PRINCIPLES REQUIRE THOSE ASSERTING THE WAIVER OF FUNDAMENTAL RIGHTS TO MEET STRINGENT CONSTITUTIONAL BURDENS OF PROOF AND PERSUASION. THE RESPONDENTS HAVE NOT CLAIMED CONSENT, MUCH LESS ATTEMPTED TO PROVE IT. THUS, SINCE THE REQUISITE BURDENS OF PROOF AND PERSUASION HAVE NOT BEEN MET, APPELLANT'S DISMISSAL IS CONSTITUTIONALLY UNJUSTIFIED AND HE SHOULD BE REINSTATED.

The burden of proving justification for the mass bed-check search for evidence of crime rests with the respondents. (See Appellant's Reply Brief, pp. 13-14.) As we have demonstrated in our reply brief before the District Court, the respondents have never claimed consent as a defense to the mass raid. Instead, they have assumed that the receipt of ANC benefits requires the forfeiture of Fourth Amendment protection (see Appellant's Reply Brief, pp. 9-13); have offered no proof going to the issue of lack of meaningful consent; and have in fact attempted to prevent the appellant from introducing evidence on this issue. (See, for example, R.T. 342-343.) Thus the respondents have patently failed to meet the stringent requirements which the constitution places on those who seek justification for the violation of Fourth Amendment rights in the doctrine of consent.

---

[7] It is important to note that throughout the opinion the Court uses the term "eligibility in a confused dual sense; first, to reflect the idea that there are basic standards to be met for the receipt and retention of aid, a sense which in no way imputes criminality to anyone; and, second, to reflect the fact that the intentional securing or retention of welfare benefits in violation of the standards is a crime (see, e.g., Welfare and Institutions Code Section 1577; 1963). The merger of these two notions reflects, we believe, the acceptance, as a matter of judicial policy, of the idea that criminality can be statistically imputed to a class and made the basis for constitutional justification of exploratory searches for guilty individuals. (See the discussion of the meaning of eligibility in Appellant's Opening Brief, Appendix A.)

Although appellant was under no obligation to introduce any evidence on the issue of consent, where, as here, his testimony on the atmosphere of coercion and factual incapacity of recipients to make a free and intelligent waiver of their right to privacy has, at the very least, "created a strong *prima facie* case showing a deprivation of constitutional rights, the 'fact that the testimony was not challenged by evidence appropriately direct cannot be ushered aside' . . . ; had there been evidence obtainable to contradict and disprove the testimony offered by petitioner, it cannot be assumed that the state would have refrained from introducing it." *Pierre v. Arizona,* 306 U.S. 354, 361-362 (1939). Yet, the District Court has ignored these requirements, has ignored the failure of respondents to plead and prove consent, and, as we will demonstrate, has ignored or failed to understand appellant's proof of its unavailability.

As we stated in our reply brief in the District Court, at page 13, it was the respondents' burden to prove consent "by clear and positive testimony . . . that there was no duress or coercion, actual or implied . . . [and that the] consent [was] . . . 'unequivocal and specific' . . . 'freely and intelligently given.'" *Judd v. United States,* 190 F. 2d 649, 650-651 (D.C. Cir. 1951). And see: *Casteneda v. Superior Court,* 59 Cal. 2d 439 (1963); and *Dragna v. White,* 45 Cal. 2d 469 (1955).

Since respondents simply have never even attempted to meet the "high standards of proof for waiver of constitutional rights" (*Johnson v. Zerbst,* 304 U.S. 458 (1938), quoted in *Miranda v. Arizona,* 34 L.W. 4521. 4532 (1966)), which the law plainly and emphatically requires, "operation bedcheck's unconstitutionality remains glaringly clear and must be held not to have been justified under any viable theory of consent or waiver.

Instead, the District Court has ignored these requirements, and, indeed, reversed them. The Court stated: "We are not prepared to conclude, in the absence of a specific showing to the contrary . . . that ANC recipients had no alternative but to submit to a search and that it was not possible for their social workers, who strictly complied with orders, to obtain valid consent. Certainly, there is no greater implied assertion of authority here than in criminal cases which have approved consensual searches by identified police officers. . . ." (242 A.C.A. at 672-673.)

Passing, for the moment, the implied and novel constitutional theory that coercion could only be shown if appellant could demonstrate that ANC recipients "had no alternative but to submit to a search" (Id. at 672), it is clear that the Court has thrust the burden upon appellant to make a "specific factual showing" to the "contrary" of the Court's unsupported assumption that, in the circumstances of "operation bedcheck", searchers were not to operate coercively in seeking waivers of Fourth Amendment protections. Logically, such a burden is impossible to manage since the Court has impliedly rejected the specific factual showing made by appellant that the threat of discontinuance of ANC benefits for refusal to permit the search was a clear and present danger in the light of past practice, current knowledge and Department instructions to the social workers (even though the terminations were not to be made automatically but only after the matter was looked into), and the further specific factual showing made by the appellant that the ANC recipients were incapable of making intelligent, free, intentional waivers of constitutional rights given their depressed and disadvantaged economic, social, educational and psychological condition. The only specific factual showing which could be made in these circumstances would be one going to the events *following* the appearance of an ANC recipient at her front door in response to the searcher's knock. Since appellant asserted constitutional objections to the search *prior* to its execution and indeed as grounds for his refusal to knock on the doors of his clients—which he testified would in itself be coercion (R.T. 351:11-25)[8]—the burden placed upon appellant is not only a shocking reversal of the ordinary principles governing the distribution of burdens of proof regarding waiver questions but also is one logically impossible to carry.

This approach to the waiver of fundamental constitutional rights is directly contrary to the long established principle that "courts indulge every reasonable presumption against waiver of fundamental constitutional rights" and that "they do not presume acquiescence in the loss of fundamental rights." *Johnson v. Zerbst,* 304 U.S. 458, 464. *Zerbst* involved the right to counsel; surely no more fundamental a right than the right to be secure in one's house against unreasonable searches and seizures aimed at criminal prosecution. The *Zerbst* opinion went on to say: "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances . . .

---

[8] ". . . [T]hese people have constitutional rights to be secure in their homes. The entry as it was explained in the meeting with Mr. Weir [referring to the January 3rd briefing of the social workers as to the method of executing the raid], was to be by force. Our presence at the door at this time of the day is a threat in itself. People, recipients know that if they refuse to admit a worker, they probably will be discontinued, that recipients have been discontinued for this refusal . . . the threat is there, the recipient realizes it, the workers realize it, and people are discontinued, recipients are discontinued if they refuse."

including the background, experience and conduct of the accused . . ." Ibid.

Most recently, in *Miranda v. Arizona,* 34 L.W. 4521, the United States Supreme Court has reaffirmed these principles in dealing with a different fundamental right, the privilege against self-incrimination. In the course of its opinion, the Court asserted: "This Court has always set high standards of proof for the waiver of constitutional rights, *Johnson v. Zerbst* . . ." Id. at 4532. Discussing the voluntariness doctrine, the Court said: "The voluntariness doctrine . . . encompasses all interrogation practices which are *likely* to exert such pressure upon an individual as to disable him from making a free and rational choice." Id. at 4529. (Emphasis added.) "A once stated warning" the Court said, in discussing the waiver question, "delivered by those who will conduct the interrogation, cannot itself suffice to that end among those who most require knowledge of their rights." Id. at 4531. Of course, in the case at bar, not even a "once stated warning" that recipients were not under any obligation to permit the search, and that, indeed, they had a constitutional right to resist, was even considered by those who ordered the raid. But, as the Court pointed out, in *Miranda,* quoting *Carnley v. Cochran,* 369 U.S. 506, 516 (1962), "'Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.'" Id. at 4532. We deal, in this case, with a class of persons who, as Attorney

General Katzenbach has noted, stand in a very different relation to the law than do those who are economically independent. "To us," he said, "laws and regulations are protections and guides, established for our benefit, and for us to use. But to the poor, they are a hostile maze, established as harassment, at all costs to be avoided." Quoted in Wald, *Law and Poverty,* 1965, Report To The Nat'l Conf. On Law and Poverty, 6. Former Attorney General Kennedy stated the case even more bluntly: "The poor man," he said, "looks upon the law as an enemy, not as a friend. For him the law is always taking something away." Ibid. In these circumstances, even if some effort had been undertaken to state formally to the recipients that they had Fourth Amendment protection and were certainly under no obligation to permit a search of their homes, it is most doubtful that "consent" could reasonably be anticipated as a constitutionally meaningful waiver. As the United States Supreme Court said in *Haley v. Ohio,* 332 U.S. 596, 601, ". . . we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain." Finally, the protections of the Fifth Amendment, with which the United States Supreme Court was specifically concerned in *Miranda,* historically arose together with the protections of the Fourth. As was said by Justice Bradley in the landmark case of *Boyd v.*

United States, 116 U.S. 616, 629: "Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment [referring to what Lord Camden had said in *Entick v. Carrington,* 19 How. State Tr. 1029: "It is very certain that the law obligeth no man to accuse himself; because the necessary means of compelling self accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it would seem that the search for evidence is disallowed upon the same principle"]. Ibid. In this regard, Justice Bradley concluded, "the Fourth and Fifth Amendments run almost into each other." In view of these considerations, we submit that the principles expressed in *Miranda* are intimately intertwined with the sort of situation presented by the case at bar. Moreover, as the *Miranda* opinion makes clear, these fundamental freedoms should be viewed as having developed, historically, in the process of groping "for the proper scope of governmental power over the citizen." Id. at 4528. And since a " 'noble principle often transcends its origins', the privilege has come rightfully to be recognized in part as an individual's substantive right, a 'right to a private enclave where he can lead a private life,' *U.S. v. Grunewald,* 233 F. 2d 556, 579, 581-582 (Frank, J., dissenting), rev'd 353 U.S. 391 (1957)."

What is at stake in the case at bar is fundamentally the same principle which the Court in *Miranda* iden-

General Katzenbach has noted, stand in a very different relation to the law than do those who are economically independent. "To us," he said, "laws and regulations are protections and guides, established for our benefit, and for us to use. But to the poor, they are a hostile maze, established as harassment, at all costs to be avoided." Quoted in Wald, *Law and Poverty,* 1965, Report To The Nat'l Conf. On Law and Poverty, 6. Former Attorney General Kennedy stated the case even more bluntly: "The poor man," he said, "looks upon the law as an enemy, not as a friend. For him the law is always taking something away." Ibid. In these circumstances, even if some effort had been undertaken to state formally to the recipients that they had Fourth Amendment protection and were certainly under no obligation to permit a search of their homes, it is most doubtful that "consent" could reasonably be anticipated as a constitutionally meaningful waiver. As the United States Supreme Court said in *Haley v. Ohio,* 332 U.S. 596, 601, ". . . we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain." Finally, the protections of the Fifth Amendment, with which the United States Supreme Court was specifically concerned in *Miranda,* historically arose together with the protections of the Fourth. As was said by Justice Bradley in the landmark case of *Boyd v.*

United States, 116 U.S. 616, 629: "Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment [referring to what Lord Camden had said in *Entick v. Carrington,* 19 How. State Tr. 1029: "It is very certain that the law obligeth no man to accuse himself; because the necessary means of compelling self accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it would seem that the search for evidence is disallowed upon the same principle"]. Ibid. In this regard, Justice Bradley concluded, "the Fourth and Fifth Amendments run almost into each other." In view of these considerations, we submit that the principles expressed in *Miranda* are intimately intertwined with the sort of situation presented by the case at bar. Moreover, as the *Miranda* opinion makes clear, these fundamental freedoms should be viewed as having developed, historically, in the process of groping "for the proper scope of governmental power over the citizen." Id. at 4528. And since a " 'noble principle often transcends its origins', the privilege has come rightfully to be recognized in part as an individual's substantive right, a 'right to a private enclave where he can lead a private life,' *U.S. v. Grunewald,* 233 F. 2d 556, 579, 581-582 (Frank, J., dissenting), rev'd 353 U.S. 391 (1957)."

What is at stake in the case at bar is fundamentally the same principle which the Court in *Miranda* identified as "the constitutional foundation underlying the privilege," namely, "the respect a government—state or federal—must accord to the dignity and integrity of its citizens." Ibid.

C. ASSUMING THAT RESPONDENTS HAD URGED THE DEFENSE OF CONSENT: WHERE THE UNCONTRADICTED EVIDENCE DISCLOSES THAT THE PERSONS WHOSE HOMES ARE TO BE SEARCHED ARE WHOLLY DEPENDENT UPON WELFARE BENEFITS FOR THE NECESSITIES OF LIFE, ARE LACKING ALL BUT A MINIMAL FORMAL EDUCATION (AND THAT OBTAINED LARGELY IN SEGREGATED SOUTHERN NEGRO SCHOOLS), ARE LARGELY MEMBERS OF THE MOST OPPRESSED RACIAL AND ETHNIC MINORITIES, ARE PSYCHOLOGICALLY DEPRESSED, ARE BASICALLY SUBSERVIENT TO AND COMPLIANT WITH ASSERTION OF AUTHORITY, ARE LACKING IN SKILLS AND ABILITY WITH WHICH TO SUPPORT THEMSELVES AND THEIR MINOR CHILDREN, ARE DIVORCED OR SEPARATED AND THUS DEPRIVED OF OTHER FINANCIAL AND EMOTIONAL SUPPORT, AND ARE AWARE THAT A REFUSAL TO PERMIT A SEARCH OF THEIR HOMES FOR EVIDENCE OF CRIME AND AS A CHECK ON ELIGIBILITY FOR WELFARE BENEFITS WILL PROBABLY RESULT IN A SUSPENSION OR TERMINATION OF THEIR BENEFITS; AND WHERE THE SOCIAL WORKER SEEKING ADMISSION TO MAKE THE SEARCH HAS AUTHORITY TO INITIATE A TERMINATION OF BENEFITS, AND WHERE SUCH WORKER CANNOT SAY, WITHIN THE INSTRUCTED POLICY OF HIS WELFARE DEPARTMENT, THAT A REFUSAL TO PERMIT ENTRY WILL NOT LIKELY RESULT IN A LOSS OF ECONOMIC BENEFITS AND CAN ONLY STATE THAT SUCH LOSS WOULD NOT AUTOMATICALLY OCCUR—IN SUCH CIRCUMSTANCES NO CONSTITUTIONALLY VALID WAIVER OR CONSENT MAY BE FOUND.

It is clear that the District Court of Appeal conceived of this case as controlled by the principles of waiver of Fourth Amendment protections via the doctrine of consent. These principles ordinarily have been given judicial exposition in appeals from criminal prosecutions where Fourth Amendment defenses have been sought to be overborne by claimed waiver through free and voluntary consent. In such cases, the Court's perspective is from a point in time after the completion of the protested search.

The District Court apparently encountered some difficulty in adjusting to the perspective required by the facts of the case at bar, namely, the adjudication of the constitutional validity of *contemplated* consents to otherwise unconstitutional searches that were ordered to be, but were not yet, executed.

The critical language of the District Court's opinion falls into two parts as follows:

1) "appellant and other social workers were repeatedly instructed that they were to carefully explain the purpose of their call [to search for evidence of crime and forfeiture of benefits; primarily to search for 'unauthorized men'] and to seek permission or consent to search, with the clear implication that they were not to threaten automatic discontinuance of benefits or to use other coercive tactics. . . .

2) "we must assume for the purpose of this discussion that the instructions would have been followed and consent obtained. Under these circumstances, we are not prepared to conclude, in the absence of a specific factual showing to the contrary, as in the Johnson case, that the ANC recipients had no alternative but to submit to a search and that it was not possible for their social workers, who strictly complied with orders, to obtain valid consent."

The first part quoted here assumes that merely because verbal threats of automatic discontinuance of ANC benefits were not to be made by the social workers at the time of their request for permission to search, it follows, at least by implication, that the social workers were not to "use other coercive tactics." This is both illogical and in conflict with the evidence. Suppose a recipient were to ask such a social worker: "Will my ANC benefits be jeopardized by my refusal to let you search my house, as you and I know that has been the case in the past for recipients who have not submitted to requests for permission to search?" What would an honest and accurate answer be? "Not automatically; the Department will look into the matter, however." (See R.T. 77:1-17; R.T. 184:17-23; R.T. 267:11-26; R.T. 309:11-14; R.T. 341:6-17.) Suppose the recipient were to ask next: "Well, since it has never been really automatic, but merely highly probable that benefits would be suspended after such refusals, can you assure me that if I refuse, my family's benefits will not possibly or *probably* be cut off?" What could an honest social worker say in response? He would be both honor and duty bound to say that he could not give her an answer based on any absolutely authoritative knowledge; but that, if he were to speak honestly about his judgment as to the likely consequences of her refusal, he could not but say that at the very least it was indeed possible that her family's benefits would be cut off; and, in the light of surrounding circumstances, hardly unlikely; and, indeed, it might perhaps be highly probable.

Faced with the alternative of granting permission for her house to be searched or at least possibly or more than likely probably having her family's necessities of life cut off, is a mother of needy children not being confronted with "coercive tactics"? The District Court is simply illogical when it leaps from the premise that no automatic cut-off threat was to be made verbally to the conclusion that no other coercive tactics were to be used. This has nothing to do with the good will or the intentions of the individual social worker. Given the best will in the world, and the kindest and most benevolent of intentions, no social worker in the context of "operation-bedcheck" could avoid using coercive tactics. His very presence, despite any protestations of innocence, was a coercive element in an atmosphere which left no room for freedom or voluntariness. Try as he might, he could not escape from using and being a part of the coercive tactics labelled "operation bedcheck."

The second part of the critical language of the District court's opinion contains most stunning departures from established norms and principles of constitutional adjudication.

Though the first sentence quoted does not expressly say so, it must be assumed that the District Court means that the consent which it assumes would have been obtained by the social workers who scrupulously followed their instructions, would have been a full, free and voluntary consent. If that is the meaning of the sentence, it is illogical, since the instructions to be followed could not insure such consents; rather, as we have just shown, the instructions to be followed could not but prevent such consents from being obtained. Moreover, the instructions to be followed are in no conceivable way a guarantee or adequate safeguard against the forces of fear, dependence and ignorance generally present in the ANC population —a condition from which the recipients are ostensibly to be rehabilitated by the efforts of the social workers —and which are calculated to produce compliance with a request, particularly by the social worker who controls the family's purse strings, for permission to search that can hardly be characterized as free and voluntary, and certainly not as a constitutionally adequate intelligent, free waiver of fundamental Fourth Amendment protection which would require *intentional* relinquishment of a *known* right.

The second part of the Court's language advances a standard for measuring consent which is appallingly incongruent with our constitutional tradition. "[W]e are not prepared to conclude", states the Court, "that the ANC recipients *had no alternative but to submit* to a search. . . ." (242 A.C.A. at 672.) (Emphasis added.) The standard thus suggested is that only where "no alternative" is present could sufficient coercion to vitiate consent be found. But where there is *some* alternative, then consent can be constitutionally voluntary. This implied standard of coercion explains the Court's treatment of the problem of possible or even probable discontinuance of benefits. Only an "automatic discontinuance", implies the Court, would constitute improper coercion; for an automatic discontinuance would give the recipient "no alternative" but to submit to search or lose benefits. This standard completely ignores the extensive coercive environment which exists short of the "no alternative" test, an environment which the Court apparently does not understand, as witnessed by its statement that "[c]ertainly there is no greater implied assertion of authority here than in criminal cases which have approved consensual searches by identified police officers. . . ." (242 A.C.A. at 672-673.)

This view of the Court's position reveals that it is but a thinly-disguised version of the respondents' argument that recipients of welfare benefits have no Fourth Amendment rights; that the receipt of such benefits works a forfeiture of rights of privacy, and that consent is to be understood not "as a matter of defense" to an otherwise unconstitutional search, but "simply a matter [that is, a condition] of applying for aid." (Appellant's Reply Brief, p. 7.) For the standards for measuring "consent", evolved by the District Court and its handling of the burden of proof (which is in effect placed on the appellant), allow room for so much real coercion as to reduce the individual right of privacy virtually to the vanishing point. In this posture, the District Court is using "consent" as a way of conditioning the necessities of life for those in the ANC program upon the waiver of their fundamental right to privacy. This is tantamount to invoking the illicit theory of "unconstitutional conditions" in the guise of a discussion of the theory of "consent." But, a powerful line of recent authority forcefully rejects the conditioning of benefits on waiver of fundamental freedoms on any grounds less than compelling governmental need, where the state has carried the burden of proving that there are no alternative methods of reaching its legitimate goals than by those which damage or threaten fundamental freedoms. (See Appellant's Reply Brief, pp. 12-13.)

As we have already noted, the nature of this case raises questions which are not reached in the ordinary criminal case. Thus such cases do not provide ready analogies for the measurement of the constitutional standard for consent here. The closest analogy can be found in the Fifth Amendment area of in-custody interrogation, a situation in which the environment is in itself coercive. The Supreme Court has recently asserted stringent procedural safeguards for the protection of the privilege against self-incrimination in recognition of the coercive effects of police custody. In *Miranda v. Arizona,* 34 L.W. 4521 (1966) the Court stated: "We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains *inherently compelling pressures* which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." (Id. at 4530; emphasis added.) In order to combat such pressures the Court required, as a matter of constitutional compulsion, that the person involved be afforded an attorney in advance of interrogation and be clearly advised of his right to silence.

No lesser procedures would serve "in overcoming the pressures of the interrogation atmosphere." Ibid.

We believe that the *Miranda* analogy is compelling not only because the coercive atmosphere of the station house is of the same order as the generally coercive atmosphere of recipient dependency, and, more particularly, of the overwhelmingly coercive atmosphere of "operation bedcheck", but also because of the close constitutional relationship between the Fourth and the Fifth Amendments, for, as Justice Bradley remarked, in some circumstances "the Fourth and Fifth Amendments run almost into each other." *Boyd v. United States,* 116 U.S. 616, 629 (1886). Indeed the welfare search is the kind of search to which the above quote from *Boyd* was directed, one involving a situation in which there is a "forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods. . . ." (Id. at 629.) In the *Boyd* case a federal statute required certain individuals either to produce, pursuant to a subpoena duces tecum, certain invoices which could provide evidence resulting in a forfeiture of goods or be deemed to have admitted certain allegations of wrongdoing. Here we have a situation in which a welfare recipient is forced to the choice of either admitting a welfare searcher into her home to gather evidence of welfare crime, mostly in the form of testimony from the recipient or any man found on the premises, which could result in a forfeiture of benefits or prosecution, or both, or face the forfeiture of such benefits for refusal to permit entry.

It is basic that only a truly free and voluntary consent may conceivably justify an otherwise unconstitutional search and that voluntariness must be judged not only with respect to the relationship of authority[9] between the searcher and the person whose house is to be searched but also with respect to other criteria of coercion, including any inherently compelling pressures present in the atmosphere in which the bed-check raid was to be conducted.

Applying such principles to the case at bar, it can be easily seen from the uncontradicted facts in the record that the circumstances of the mass bed-check raid were coercive in the extreme. In the first place, the relationship between the welfare recipient whose home was to be searched and the searcher at the front door was not only one of a citizen responding to a request made "under color of office", and not only one of established economic and social dependence in the face of continuing official authority to control the income, freedom and even the retention of control over her children by the client, it was the regular caseworker who was to make the initial contact with his recipient-client at the front door (see Appellant's Opening Brief, pp. 16-17)—in short, a relationship between a recipient of public funds and the individual in authority who has power to determine both the right to and the amount of the recipient's cash benefits—but also a relationship of "innocent suspect" to official detective investigating persons very much in the position of the accused in *Miranda.* Custodial compulsion here is implicit:

---

[9] "Entry to defendant's living quarters was demanded under color of office. It was granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right. Cf. *Amos v. United States*, 255 U.S. 313." *Johnson v. United States*, 333 U.S. 10, 13.

> "The very idea that one may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."
>
> *Yick Wo v. Hopkins,* 118 U.S. 356, 370.

In this regard, it must be stressed that an additional purpose of the bed-check raid was the determination of basic eligibility, that is, the basic entitlement to public moneys. (See e.g., District Court Opinion, p. 669.) The raid thus combined the economic and penal purposes and their attendant coercive properties. This was therefore, no ordinary relationship between an officer of the law and a mere witness or suspect, a relationship in which the coercive authority of the officer is limited to ordinary law-enforcement duties and powers. The relationship in this case superimposed upon the existing authority of the caseworker, with its potential economic sanctions, the additional relationship of law enforcement officer. There was thus a cumulation of coercive powers and a corresponding heightening of the coercive threat which is ordinarily present in the relation of social worker to recipient. This fact alone should serve to distinguish this case from the ordinary criminal case and its standards for a voluntary consent.

The circumstances of coercion here were thus even more aggravated than those attendant upon the ordinary police officer-suspect relation. For it is hard to conceive, outside of a prison (as in *Miranda,* and in some ways the atmosphere here was even more coercive), of a more potentially coercive environment than the abject position of the recipient of welfare benefits before the social welfare department, a relationship perhaps tolerable when the ends of government are benign but wholly intolerable when the ends of the criminal law are pursued, as in "operation bedcheck."

Proof of the abject dependence of the welfare recipient, upon his welfare benefits, if necessary, can be seen in the voluminous and official studies of the State Department of Welfare and the Alameda County Welfare Department. Of direct relevance is the extensive report of the research project conducted jointly by the Alameda County Welfare Department and the Council of Social Planning of Alameda County, entitled Aid to Needy Children Intensive Services Unit Research Project, submitted on March 1, 1962, some months before the mass raid of January 13, 1963. (The report is part of petitioner's Exhibit No. 1 in evidence; it will hereafter be referred to as the Report.)

The report was based on, among other things, "a sample of 115 families representing the whole case load in Alameda County. . . ." (p. 1.) The Report concluded:

> "Statistics from the representative sample show that a majority of mothers receiving ANC in

> Alameda County cannot be turned into wage earners, supporting themselves and their children. More than half had no work experience in the past five years and those with recent jobs were mostly domestics or unskilled workers. More than half had at least one pre-school child, and the average family had three children which poses difficult child care problems. Nearly half were unable to work because of physical or mental disabilities, although many of their disabilities could be reduced or removed by proper medical attention. In addition, 70 percent were Negroes, mostly born in the South, and lacking the minimal education required by most employers.
>
> "The problem of making ANC mothers self supporting is more difficult in Alameda County than in California as a whole, because the proportion of Negroes is nearly twice as high and proportion with recent work experience is lower. In addition child care arrangements are difficult if not impossible to make, educational levels are low, and many employers are against employing (1) Aid to Needy Children Mothers, (2) Negroes, (3) women with children, (4) unmarried mothers." (Report, p. 1.)

The ANC population statistics accompanying the Report, document this virtually unrelieved picture of abject economic and social dependence: 70.4 percent are Negro; 67.9 percent were born in the South; 68.6 percent had less education than a high school diploma; 40.8 percent had three or more children receiving ANC benefits; 44.5 percent are not physically and mentally able to work; and 60.1 percent were deserted by their husbands or never married and were living alone. (Report, p. 6.)

Moreover, as the Report stressed, "[a] common description of the client's mental attitude was 'depression, apathy, dependency . . .'" (p. 7.)[10] What hope the Report did offer to relieve these conditions turned on the use of "intensive casework services" aimed at "improving home conditions and mental attitudes and reintegrating these broken families into community life. . . ." (Report, p. 2.)

These characteristics of ANC recipients in Alameda County were well known to the appellant, Benny Parrish. His testimony, both given and offered, reflects his knowledge of the general characteristics, evidence in the ANC population as a whole and in his own caseload. (R.T. 329:7-13.) More specifically, he testified without contradiction that his caseload consisted of mothers of needy children (R.T. 329:14-18); that the average number of children in the families in his caseload was two to three (R.T. 329:19-22); that such children had no other source of care than their mothers (R.T. 330:5-7); that none of the persons in his caseload owned personal property which could be the basis of securing funds (R.T. 327:6-8); that no person in the caseload had savings in excess of fifty dollars (R.T. 327:15-18) and that the overwhelming majority had no savings whatever (R.T. 327:19-21); that none had any real property interest whatever (R.T. 326:19-22); that none had skills which would make them readily employable on any permanent basis (R.T. 326:4-7); and that some 77% of the persons in the caseload had no full high school educational experience (R.T. 325:26-326:2).

---

[10] In light of this picture of utter deprivation, the gratuitous remark of the District Court that "the public funds provided should not be syphoned off by unauthorized adult males residing in the home, regardless of the pleasures this may afford the mothers." (p. 675), seems a cruel and perverse form of humor. Compare the statement by Professor Gordon Hamilton, used as one of Benny Parrish's training aids, in Appellant's Opening Brief, pp. 23-24.

In the face of these overwhelming facts of economic dependence, welfare workers with the power to cut off the necessities of life, could not, pursuant to Department and statutory policy, tell the persons whose homes were to be searched that their eligibility would not be affected; only that it would not *automatically* be affected. Parrish and the other social workers were powerless to alter either the fact of dependence or the Social Welfare Department a statutory policy. Parrish was thus precluded from obtaining a meaningful and voluntary consent. Despite the admonition to get permission to enter and search, that permission was already laden with coercion. It would have been a meaningless act for Parrish to attempt at the door of a recipient's home to secure a constitutionally valid consent.

Thus, the District Court of Appeal is fundamentally at error in its *assumption* that had the Welfare Department's instructions been followed, consent could have been obtained. (See 242 A.C.A. at 672.)

This fundamental error has just been officially pointed out to the Welfare Departments of the nation by the Federal Department of Health, Education and

Welfare. On March 18, 1966, in Federal Handbook Transmittal No. 77, dealing with "Methods for Determination of Eligibility," and addressed "to State Agencies Administering Approved Public Assistance Plans," the Department of Health, Education and Welfare found it necessary to take note of such violations of human dignity and constitutional rights as were effected in the name of "welfare" by such practices as Alameda County's "operation bedcheck." In doing so, the Department stated:

> "The requirement that a State plan contain policies and procedures for determination of eligibility that are consistent with program objectives and that respect legal rights of individuals and do not violate the individual's privacy or personal dignity, or harass him or violate his constitutional rights, necessitates the testing of each pertinent policy and procedure against those positive and negative criteria. If the program is locally administered with State supervision, the State agency must see that supplementary locally developed procedures are consistent with this requirement.
>
> The prohibition against a State plan containing policies and procedures for determination of eligibility that will result in violation of privacy or personal dignity, that constitute harassment, or that violate constitutional rights, requires careful and continuing attention to practices and procedures that may result in violations of these rights and principles. By way of illustration, States must especially guard against violations in such areas as entering a home by force, or without permission, or under false pretenses, making

> home visits outside of working hours, and particularly making such visits during sleeping hours; and searching in the home, for example, in rooms, closets, drawers, or papers, to seek clues to possible deception."

Is Benny Parrish to be punished for having adhered to those standards of human dignity and constitutional protection which, as our national Department of Welfare now finds it necessary to remind Benny Parrish's Alameda County employers, have always been binding on them?

CONCLUSION

For all of the foregoing reasons, and for the reasons stated in appellant's briefs before the District Court, the within petition for hearing should be granted.

Dated, Berkeley, California,
July 6, 1966.

Respectfully submitted,
Albert M. Bendich,
Coleman A. Blease,
Attorneys for Appellant and Petitioner.

(Appendix Follows)

Appendix

In the District Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 22,556

BENNY MAX PARRISH,
Petitioner and Appellant,
vs.
THE CIVIL SERVICE COMMISSION OF THE COUNTY OF ALAMEDA, State of California, et al.,
Respondents.

OPINION

This appeal from a judgment denying appellant B. M. Parrish's petition for a writ of mandamus for reinstatement as Social Worker II in Alameda County after his discharge for insubordination, raises questions of first impression concerning the propriety and constitutionality of an order directing appellant's participation in an operation to investigate welfare frauds. Respondents include the County of Alameda (hereafter county) and its civil service commission, board of supervisors, Department of Welfare (hereafter department) and the director thereof, Harold B. Kehoe (hereafter director).

The basic facts are not in dispute.[1] On November 20, 1962, the board of supervisors unanimously adopted a resolution requesting the county welfare director to conduct a series of unscheduled visits to welfare families similar to "operation weekend" in Kern County, where a large number of welfare frauds had been discovered in this manner.

The social workers of the Family Service Division were told on January 3 or 4 by the assistant director that the first set of unscheduled visits would be made between 6:30 and 10:30 a.m. on Sunday, January 13, 1963, and that the main purpose of this visit would be to look for absent parents or unauthorized males in the homes of ANC (Aid to Needy Children) recipients. The workers were instructed to select both "suspect" cases and random cases from their case load and to exclude those cases which had already been referred to the department's fraud investigation unit. A "suspect" case was one where the recipient's eligibility had not been redetermined for a period of about six months, or where the worker had some grounds for concluding that the eligibility needed further investigation. The random cases were included in order to make a better overall statistic relating to the county's total case load of about 6,000 recipient families.

---

[1] Respondents argue that no constitutional issues are presented and that our sole function is to determine whether the administrative findings are supported by substantial evidence. However, like the court below, we will determine the matter on the merits. Where constitutional issues are involved, we must make an independent examination of the facts and law (*Rescue Army v. Municipal Court,* 28 Cal.2d 460 [171 P.2d 8]; *Ker v. California,* 374 U.S. 23, ... [83 S.Ct. 1623, 10 L.Ed.2d 726, 728].

At a subsequent meeting on Thursday, January 10, workers chosen to go that weekend were given precise instructions for the procedure to be followed by the supervisor of the department's fraud unit. This particular mass operation to determine eligibility was to be conducted by pairs of social workers: the worker known to the recipient would present and identify himself at the front door of the home of the recipient, indicate the exact purpose of the call and request admission. If the request for entry was denied, the workers were directed not to enter the home. If the entry was allowed, they were directed to investigate in the same manner as they had on other occasions for the ANC program.

If the worker was admitted into the home, before proceeding into any other part of the house he was to ask permission to do so from the recipient. The second worker was to be stationed at the back door or other exit; if the worker at the front door was admitted, he was then to go through the house and let his partner in by the other exit. ~~As~~ Since in the past the department had withheld benefits from recipients who refused entry to members of the fraud unit, it was asked whether a refusal of entry on January 13 would automatically be a ground for discontinuance. The workers were instructed that if admission was not granted,

obviously stationed at back to prevent escape

explanation of possibilities
(a) loss
(b) criminal
(c) no consent for children
program is to children not parents

benefits would not automatically be discontinued but the reason for denying admission would subsequently be investigated.

The workers were given these special instructions as this kind of operation was not among their ordinary routine duties which included ① supervising case loads of recipients of public assistance, ② conducting office and home interviews to determine continuing eligibility, ③ recommending changes in aid, ④ completing yearly renewals, ⑤ determining eligibility for public assistance, ⑥ completing applications and ⑦ collecting and evaluating data and ⑧ carrying continuing responsibility for their case load of recipients. The particular kind of investigation here in question was usually carried on by the fraud unit whose members were classified Social Worker III, "Welfare Investigators." They worked in cooperation with the district attorney's office and investigated cases of suspected fraud referred by the case workers, who were classified as Social Workers II.

The A primary purpose of the mass operation of January 13, 1963, was to identify and find the unauthorized males. The B secondary purpose was to make the usual kind of administrative investigation relating to eligibility and to find out how much food there was in the house, the condition of the home and children, how the recipients were faring with their monthly checks, etc. As to the food and money, the workers were instructed to ask the recipient how much was left of the grant. (C) Any unauthorized persons found in the home were to be identified and asked to

— why the male guilty of a crime? or is it to get a conspiracy to violate the law.

Couldn't this be done in normal hours

what right to ask
who people in
house are —

and who is
unauthorized —

explain their presence. If given permission to enter and permission to search, the workers were instructed to thoroughly search the premises, including looking in and under the beds.

Appellant, a Social Worker II, submitted a written refusal to participate in the mass visitations on the grounds that they were degrading, presumed the guilt of recipients, violated their rights of privacy, were not required under his job classification, and were inconsistent with his training and the rehabilitative goals of the ANC program. His services were terminated by the director for insubordination. The order of dismissal was ratified by the supervisors, upheld, after hearing, by the civil service commission, and (2a affirmed by the trial court on appellant's petition in mandamus for reinstatement.

Preliminarily, we deem it helpful to set forth the pertinent provisions of the Welfare and Institutions Code concerning the ANC program (Welf. & Inst. Code, § 1500 et seq.) which is coordinated with the federal program under which federal funds are made available (*Merced County v. Department of Social Welfare,* 148 Cal.App.2d 540, 541 [307 P.2d 46]; *Department of Mental Hygiene v. McGilvery,* 50 Cal. 2d 742 [329 P.2d 689]). Section 1550.6[2] of the Welfare and Institutions Code provides: "The county is responsible for the eligibility of all recipients of aid under this chapter and shall as often as necessary redetermine eligibility of all recipients to receive aid."

---

[2] All of the above statutory references concern the provisions of the Welfare and Institutions Code at the time here relevant before the 1963 amendments (Stats. 1963, ch. 510). These amendments, however, did not substantially change the law but pursuant to a change made in federal law, existing groups of eligible children were redefined, children of unemployed parents were made eligible and the program was expanded to provide services as well as financial assistance to recipient families (tenBroek, *California's Dual System of Family Law, Part II;* 16 Stan.L.Rev., pp. 900, 952).

A needy child is defined as a person under the age of 18 who has been deprived of parental support or care (Welf. & Inst. Code, § 1500; 42 U.S.C.A. § 606, subd. (a)). The federal act requires that the state agency in determining need shall take into consideration any other income and resources of a child claiming aid (42 U.S.C.A. § 602, subd. (a)(7)). The provision most significant here is the portion of section 1508 of the Welfare and Institutions Code providing that if a needy child lives with his mother and stepfather or an adult male person assuming the role of spouse to the mother, although not legally married to her, the amount of the grant made shall be computed after consideration given to the income of such adult male person. Section 1511 sets forth the maximum amount of aid to be provided per family based on the number of children in the family; section 1511.5 that minimum basic standards of adequate care shall be distributed to the counties and shall be binding upon them. Pursuant to section 1550, the application for aid must be verified under oath or shall contain a written declaration made under penalty of perjury.

But said: nothing in Federal Act about that.

serious question of whether this is appropri under fed law. what if he doesn't support child

The county is responsible for the eligibility of all recipients of aid under the Aid to Needy Children program and shall as often as necessary redetermine eligibility of all recipients (§ 1550.6) and shall redetermine eligibility annually and at such time, or such intervals as necessary, require the family to complete a certificate containing the information necessary to establish the continuing eligibility and grant pursuant to section 103.3 of the Welfare and Institutions Code.[3] Section 1563 provides that any person signing such certificate who wilfully states therein any material matter which he knows to be false is guilty of a misdemeanor. Section 1575 provides: "Any person other than a needy child, as defined in Section 1500, who willfully and knowingly receives or uses any part of an aid grant paid pursuant to this chapter for a purpose other than support of the needy children and the caretaker involved is guilty of a misdemeanor." Section 1577 provides: "Any person other than a needy child, as defined in Section 1500, who willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact to obtain aid, or who, knowing he is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he is not entitled, or a larger amount than that to which he is legally entitled, is guilty of a misdemeanor."[4] The district attorney of the county is in charge of the enforcement of these provisions of the Welfare and Institutions Code (Welf. & Inst. Code, §§ 1570-1574).

---

[3] Section 103.3 provides that the program be administered with "due consideration for the needs of applicants and the safeguarding of public funds." Subdivision (a) provides that any recipient for public assistance shall be informed as to the provisions of eligibility and his responsibility for reporting facts material to a correct determination of his eligibility of the grant.

[4] Subdivision (b) of section 103.3 provides, in part, that any recipient for public assistance "shall be responsible for reporting accurately and completely within his competence those facts required of him pursuant to subdivision (a) and to report promptly any changes in those facts."

"Operation weekend" was undertaken by the county pursuant to the above statutory provisions requiring a responsible and periodic redetermination of eligibility. Appellant does not challenge or question the county's duty to do so, but asserts that the method chosen—a mass operation involving suspect and random cases—is a general exploratory search without valid warrants, in violation of the Fourth and Fourteenth Amendments of the U. S. Constitution and section 19 of article I of the state Constitution, and is a denial of equal protection and due process.

not understandable in light penalties

We need not base our conclusion that search warrants were not required in this case on the ground, asserted by respondents, that the operation proposed was a mere administrative procedure to insure eligibility and could not be characterized a criminal investigation (*Frank v. Maryland,* 359 U.S. 360, 372-373 [79 S.Ct. 804, 3 L.Ed.2d 877]; *Abel v. United States,* 362 U.S. 217, 230-234 [80 S.Ct. 683, 4 L.Ed.2d 668]). Even if we assume the operation to be a criminal investigation, it is not illegal or unreasonable "for officers to seek interviews with suspects or witnesses or to call upon them at their homes for such purposes" (*People v. Michael,* 45 Cal.2d 751, 754 [290 P.2d 852]; *People v. Martin,* 45 Cal.2d 755, 761 [290 P.2d 855]). It is well established that where a person freely and voluntarily consents to a search of the premises under his control, his constitutional rights are not violated and any search or taking of evidence is not unreason-

nub!!

how do we know it is voluntary – not told person could refuse – see Miranda v get an attorney able (*People v. Burke,* 47 Cal.2d 45 [301 P.2d 241]; *People v. Fahrner,* 213 Cal.App.2d 535, 536 [28 Cal. Rptr. 926]). Where there is a free and voluntary consent, it is not necessary for the respondents to otherwise justify an investigation or search (*People v. McGhee,* 196 Cal.App.2d 458 [16 Cal.Rptr. 625]; *People v. McLean,* 56 Cal.2d 660, 664 [16 Cal.Rptr. 347, 365 P.2d 403]).

Appellant relies on *Johnson v. United States,* 333 U.S. 10 [68 S.Ct. 367, 92 L.Ed. 436], *Amos v. United States,* 255 U.S. 313 [41 S.Ct. 266, 65 L.Ed. 654], and other cases involving the question of consent, holding that under the particular facts presented, there was no voluntary relinquishment of a known right but mere acquiescence to an express or implied assertion of authority. Applicable is the following comment with reference to the Johnson case and similar authorities made in *People v. Michael, supra,* page 753, and quoted with approval in *People v. Burke, supra,* page 49: " 'Whether in a particular case an apparent consent was in fact voluntarily given or was in submission to an express or implied assertion of authority, is a question of fact to be determined in the light of all the circumstances.' "

doubtful today ~~[illegible]~~ ~~by~~ since Miranda

Here, appellant and other social workers were repeatedly instructed that they were to carefully explain the purpose of their call and to seek permission or consent to search, with the clear implication that they were not to threaten automatic discontinuance of benefits or to use other coercive tactics. If appellant had failed to follow these instructions, he would like-

but could say discontinuance might result!

must — consent obtained — but how do we know it is voluntary

wise have been subject to disciplinary action. Although the facts here presented are unique and present many problems, we must assume for the purpose of this discussion that the instructions would have been followed and consent obtained.[5] Under these circumstances, we are not prepared to conclude, in the absence of a specific factual showing to the contrary, as in the *Johnson* case, that the ANC recipients had no alternative but to submit to a search and that it was not possible for their social workers, who strictly complied with orders, to obtain valid consent.[6] Certainly, there is no greater implied assertion of authority here than in criminal cases which have approved consensual searches by identified police officers (*Honig*

---

[5] (See *Effective Consent to Search and Seizure*, 113 Univ. of Penn. L. Rev., 260; *Administrative Inspections and the Fourth Amendment—A Rationale*, 65 Colum.L.Rev., 288; Manwaring, *California and the Fourth Amendment*, 16 Stan.L.Rev., 318 Reich, *Midnight Welfare Searches and the Social Security Act*, 72 Yale L.J., 1347; *Search and Seizure in the Supreme Court: Shadows on the Fourth Amendment*, 28 Univ. of Chicago L. Rev., 664, 667-668).

[6] None of the authorities cited by appellant deal with the *question of consent* which is properly presented in the brief of amicus curiae as pivotal in this case. *Silverman v. United States*, 365 U.S. 505 [81 S.Ct. 769, 5 L.Ed.2d 734]; *Frank v. Maryland*, 359 U.S. 360 [79 S.Ct. 804, 3 L.Ed.2d 877]; *Wolf v. Colorado*, 338 U.S. 25 [69 S.Ct. 1359, 93 L.Ed. 1782]; *Mapp v. Ohio*, 367 U.S. 643 [81 S.Ct. 1684, 6 L.Ed.2d 1081, 84 A.L.R.2d 933]; *Dist. of Columbia v. Little*, 178 F.2d 13 [85 App.D.C. 242, 13 A.L.R.2d 954]; *Stanford v. Texas*, 379 U.S. 476 [85 S.Ct. 506, 13 L.Ed.2d 431]; *Draper v. United States*, 358 U.S. 307 [79 S.Ct. 329, 3 L.Ed 327]; *Boyd v. United States*, 116 U.S. 616 [6 S.Ct. 524, 29 L.Ed.746]; *Marcus v. Search Warrant*, 367 U.S. 717 [81 S.Ct. 1708, 6 L.Ed.2d 1127]; *Entick v. Carrington* [Eng.] 19 How. St. Tr. 1030; *United States v. Jeffers*, 342 U.S. 48 [72 S.Ct. 93, 96 L.Ed. 59]; *Carroll v. United States*, 267 U.S. 132 [45 S.Ct. 280, 69 L.Ed. 543, 39 A.L.R. 790]; *Pearson v. United States*, 150 F.2d 219; *Smith v. State* (1945) 182 Tenn. 158 [184 S.W.2d 390]).

v. United States (8 Cir. 1953) 208 F.2d 916; *People v. Michael, supra; People v. McGhee, supra*). Also, until facts are adduced relating to the invasion of privacy of others in the home or involving consent by unauthorized persons, the principles enunciated in *Tompkins v. Superior Court,* 59 Cal.2d 65 [27 Cal. Rptr. 889, 378 P.2d 113], and *People v. Shelton,* 60 Cal.2d 740 [36 Cal.Rptr. 433, 388 P.2d 665], cited by amicus curiae, would not come into play.

[illegible]

A case in point is *Honig v. United States, supra.* There, one federal agent and two police officers went to the suspect's room. After being invited to enter, the officers informed the suspect of the complaint against him and asked for identification. When he answered that he had none, the officers asked if he would mind if they searched the room for identification and he told them to proceed. The court held this to be an effective consent.

We think that the opinion in *Eaton v. Price,* 364 U.S. 263 [80 S.Ct. 1463, 4 L.Ed.2d 1708], which involved an administrative search, is informative on the question of whether consent can be effective where there have been no prior suspicions or complaints concerning particular individuals or premises. *In that case, there was an indiscriminate attempt to inspect the home in question even though there was no indication of any building code violations.* Appellant was jailed pursuant to an Ohio ordinance for refusing to let the inspectors enter without a warrant. His conviction was affirmed because the Supreme Court was equally divided, Mr. Justice Stewart having taken no part in the decision. Mr. Justice Brennan, nevertheless, wrote an opinion favoring reversal *but conceded that such warrant need not be sought where the householder gives his consent.*

waiver of ~~to~~ right to demand a warrant

Amicus curiae argue that a warrant should have been obtained before the recipient's consent to enter was requested but the cases they cite do not sustain such a contention. *Bielicki v. Superior Court,* 57 Cal. 2d 602 [21 Cal.Rptr. 552, 371 P.2d 288], was based on an arrest made after an officer had peeped through a pipe installed in a bathroom in an amusement park. The court found that defendant did not consent merely because he used a public place and held that evidence so obtained resulted from an unreasonable search. In *People v. Cruz,* 61 Cal.2d 861 [40 Cal.Rptr. 841, 395 P.2d 889], the court held that an arrest having been made in defendant's automobile, the right to search incident to arrest and without a warrant did not extend to his home and consent to search defendant's suitcase could not be given by third parties living in the home. In *Castaneda v. Superior Court,* 59 Cal.2d 439 [30 Cal.Rptr. 1, 380 P.2d 641], the officers took defendant from the place of his arrest to defendant's home and searched without a warrant. The court held the search at a different location was not incident to a lawful arrest. In *Badillo v. Superior Court,* 46 Cal.2d 269 [294 P.2d 23], the officers forced their way into the defendant's home without a search warrant and recovered a package of heroin thrown away by defendant. The court held the burden of proof that the evidence was legally obtained was on

5th amend right — not to be required to give evidence against self

the prosecution. *Kaufman v. Brown,* 93 Cal.App.2d 508 [209 P.2d 156], and similar authorities, simply hold that in a civil action for false arrest, the allegation of arrest places on the defendant the burden of showing probable cause.

As to appellant's argument concerning the Fourth Amendment right of privacy, all of our above comments concerning consent apply equally to a waiver of that right. Thus, we cannot agree, in the absence of specific facts relating to married recipients, that the situation here presents a problem involving the penumbral right of privacy and repose upheld in *Griswold v. Connecticut,* 381 U.S. 479 [85 S.Ct. 1678, 14 L.Ed.2d 510].

Appellant's argument that the investigation was invalid because it concerned a field preempted by state law is patently without merit as the statutes expressly made the county responsible for determining and redetermining eligibility (Welf. & Inst. Code, §§1500-1556).

We need not determine whether appellant is an employee or agent of the federal government as we have concluded that he was not required to participate in any violation of constitutional rights and thus no grounds existed which might subject him to criminal penalties under the Federal Civil Rights Act, 18 United States Code Annotated, title 18, section 2236, page 177.

Finally, we turn briefly to the reasonableness and propriety of the order directing appellant to particiconceded

Strange logic

pate in the mass operation of January 13. As we have indicated above, appellant was not required to participate in any unconstitutional activity and the order was made in the exercise of the county's duty to determine the continuing eligibility of recipients. As all workers in the Family Service Department were asked to participate in an operation of this kind on a weekend, the request was not unreasonable as to appellant. The job classification questionnaire submitted by appellant indicates that his duties might include evening and weeeknd hours.

Appellant complains that this operation was contrary to the rehabilitative goals of the ANC program. There are different schools of thought on this subject. The pertinent sections of the Welfare and Institutions Code, cited above, indicate that the primary purpose of the program is to insure adequate food and clothing to the minor children and to afford them a good moral climate. Certainly, the public funds provided should not be syphoned off by unauthorized adult males residing in the home, regardless of the pleasures this may afford the mothers. We see nothing inherently wrong with making weekend eligibility calls which experience has demonstrated disclose widespread fraudulent misappropriation of public funds and the deprivation of the children for whose benefit the ANC program was instituted.

We can only conclude, in complete agreement with the court below, appellant was guilty of insubordination, defined as the wilful refusal to obey the reasonable orders of an employer (*Wilbur v. Office of City*

Clerk, 143 Cal.App.2d 636, 642 [300 P.2d 84]). As stated in *Pranger v. Break,* 186 Cal.App.2d 551 at 556 [9 Cal.Rptr. 293]: "'One employed in public service does not have a constitutional right to such employment and is subject to reasonable supervision and restriction by the authorized governmental body or officer to the end that proper discipline may be maintained, and that activities among the employees may not be allowed to disrupt or impair the public service. [Citations.] Because of this dominant public interest, the exercise of such control over the public employee is not only a right but is a duty, and in the discharge thereof a wide discretion thereof is allowed, which will not be disturbed until the point of illegality is reached.'" No such point was reached here.

The judgment is affirmed.

Taylor, J.

Shoemaker, P.J., and Agee, J., concurred.

Filed May 31, 1966,
Lawrence R. Elkington, Clerk.

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

FILED
MAR 27 1967
WILLIAM I. SULLIVAN, Clerk
By
S. F. Deputy

BENNY MAX PARRISH,
Plaintiff and Appellant,
v.
THE CIVIL SERVICE COMMISSION OF THE COUNTY OF ALAMEDA, etc., et al.,
Defendants and Respondents.

S.F. 22429

In the present case an Alameda County social worker, discharged for "insubordination" for declining to participate in a mass morning raid upon the homes of the county's welfare recipients, seeks reinstatement with back pay on the ground that such participation would have involved him in multiple violations of rights secured by the federal and state Constitutions. He urges that his superiors could not properly direct him to participate in an illegal activity and that he could not, therefore, be dismissed for declining to follow such directions.

The county acknowledges that it has subsequently abandoned the method of mass morning raids to determine

SEE DISSENTING OPINION

welfare eligibility and that such operations are now forbidden by the applicable state and federal regulations.[1] Since these regulations were not in force at the time of the plaintiff's dismissal, however, we must determine whether he could properly refuse to participate in the welfare raids on the ground that they infringed rights of constitutional dimension.

For the reasons set forth in this opinion we have decided that the county's failure to secure legally effective consent to search the homes of welfare recipients rendered the mass raids unconstitutional. We have determined further that, even if effective consent had been obtained, the county could not constitutionally condition the continued receipt of welfare benefits upon the giving of such consent. We have therefore held, for these two independently sufficient reasons, that the project in which the county directed the plaintiff to take part transgressed constitutional limitations. In light of plaintiff's knowledge as to the scope and methods of the projected operation, we have concluded that he possessed adequate grounds for declining to participate.

---

[1] The state and federal regulations which bar such searches are, respectively, section V(B) of "Special Methods of Investigation," Department of Social Welfare Bulletin No. 624 (revised), effective September 1, 1963, and section 2220, item 1, and section 2230, item 1, of the United States Department of Health, Education and Welfare, Handbook of Public Assistance Administration, issued March 18, 1966, requiring state conformance therewith by July 1, 1967.

On November 21, 1962, the Board of Supervisors of Alameda County ordered the county welfare director to initiate a series of unannounced early-morning searches of the homes of the county's welfare recipients for the purpose of detecting the presence of "unauthorized males." [2] The searches were to be modeled on a Kern County project popularly known as "Operation Weekend."

Neither in planning nor in executing the searches did the county authorities attempt to secure appropriate search warrants. The social workers who conducted the searches were not required or permitted to restrict them to the homes of persons whom they had probable cause to arrest, or even to the homes of those welfare recipients whose eligibility they had any reason to doubt. Indeed, as will later appear, the majority of persons whose homes were searched were under no suspicion whatever and were in fact subjected to the raid for that very reason.

---

[2] Welfare and Institutions Code section 11351 (formerly § 1508) provides that the amount of a grant on behalf of a needy child is to be computed after considering the income of any adult male "assuming the role of spouse" to the child's mother, whether married to her or not.

The Alameda County searches, popularly and reportorially dubbed "Operation Bedcheck," commenced on Sunday, January 13, 1963, at 6:30 a.m. [3] Although the county welfare department contained a 10-man fraud unit whose members ordinarily investigated all cases of suspected fraud, that unit could not adequately staff an operation of the sweep contemplated by the supervisors. Accordingly, despite the fact that the county's social workers did not ordinarily conduct fraud investigations, their services were necessary for this undertaking.

Since the social workers lacked experience with the techniques employed by the fraud investigators they received special instruction in the procedures to be followed. Their superiors instructed them to work in pairs with one member covering the back door of each dwelling while the recipient's own social worker presented himself at the front door and sought admittance. Once inside, he would proceed to the rear door and admit his companion. Together the two would conduct a thorough search of the entire dwelling, giving particular attention to beds, closets, bathrooms and other possible places of concealment.

---

[3] At the civil service commission proceeding the welfare department's division chief testified: "We indicated that the operation should start at 6:30 A.M. [I]f they were using County automobiles . . . they should leave the County lot at 6:30 A.M. If they were leaving directly from their home . . . the call should start at approximately 6:30 as the first call."

Plaintiff was one of the social workers chosen to participate in the first wave of raids. Upon learning the nature of the proposed operation, he submitted a letter to his superior declaring that he could not participate because of his conviction that such searches were illegal. After plaintiff had explained his position to the division chief and the welfare director, he was discharged for insubordination.

"Insubordination can be rightfully predicated only upon a refusal to obey some order which a superior officer is entitled to give and entitled to have obeyed." (Garvin v. Chambers (1924) 195 Cal. 212, 224; Sheehan v. Board of Police Commrs. (1925) 197 Cal. 70, 78; Forstner v. City and County of San Francisco (1966) 243 A.C.A. 787, 794.) Plaintiff contends that his superiors were not entitled to compel his participation in illegal searches and urges that such participation might have exposed him to severe penalties under federal law. 4/

4/ One who, clothed with the authority of a state agency, invades and searches a home without a warrant and

Accordingly we must determine, as the central issue in the present case, the constitutionality of the searches contemplated and undertaken in the course of the operation. By their timing and scope those searches pose constitutional questions relating both to the Fourth Amendment's stricture against unreasonable searches and to the penumbral right of privacy and repose recently vindicated by the United States Supreme Court in Griswold v. Connecticut (1965) 381 U.S. 479. 5/

At the outset we must identify the standards which govern the constitutionality of such searches. Although misrepresentation of welfare eligibility constitutes a crime, by virtue both of special legislation directed

---

without probable cause to effect an arrest upon the premises may incur civil liability to the occupant under section 1983 of title 42 of the United States Code. (See Monroe v. Pape (1961) 365 U.S. 167; Cohen v. Norris (9th Cir. 1962) 300 F.2d 24, 31-32; Beauregard v. Wingard (S.D. Cal. 1964) 230 F.Supp. 167, 173-177.) Moreover, under section 242 of title 18 of the United States Code, wilful participation in a state-directed activity which infringes any right secured by the federal Constitution is a misdemeanor, punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both. (See United States v. Price (1966) 383 U.S. 787; Screws v. United States (1945) 325 U.S. 91; People v. Cahan (1955) 44 Cal.2d 434, 436.) (But see Note, Federal Judicial Review of State Welfare Practices (1967) 67 Colum. L.Rev. 84, 96 fn. 76.)

5/ See, generally, Symposium on the Griswold Case and the Right of Privacy (1965) 64 Mich.L.Rev. 197.

to that evil (Welf. & Inst. Code, §§ 11265, 11482 [formerly §§ 1563, 1577]) and the general grand theft statutes (Pen. Code, §§ 484, 487; see People v. Bailey (1961) 55 Cal.2d 514, 516-518; People v. Ryerson (1962) 199 Cal.App.2d 646, 649-650), the county nevertheless contends that the searches undertaken in the course of the operation need not meet the standards ordinarily applied to searches for evidence of crime. It predicates this contention upon its claim that the searches were designed primarily to secure proof of welfare ineligibility so as to reduce the number of persons on welfare rather than to lay the basis for criminal prosecutions. [6]

In evaluating the county's contention our principal recourse must be to the decision of the United States Supreme Court in Frank v. Maryland (1959) 359 U.S. 360, wherein the court countenanced a distinction between searches directed to the procurement of evidence of crime and searches aimed toward the advancement of the general welfare by means other than criminal prosecutions. 7/ In that case the court upheld a Baltimore ordinance requiring the occupant of any premises to admit a city health inspector whenever the latter "shall have cause to suspect that a nuisance exists . . . therein" and shall have "demand[ed] entry therein in the day time . . . . " (359 U.S. at p. 361.) Examination of the Frank opinion discloses four separate and independently sufficient factors which render its holding inapplicable to the case before us.

---

[6] The county cannot now effectively preclude the possibility that, in an appropriate case, it would have undertaken criminal proceedings on the basis of evidence secured in the operation. That possibility suggests the danger that "the administrative officer who invades the privacy of the home may be only a front for the police who are thus saved the nuisance of getting a warrant." (Abel v. United States (1960) 362 U.S. 217, 242 [Douglas, J., dissenting].)

First, the evidence sought by the health inspector in the Frank case would not itself have afforded a basis for criminal prosecution. The Baltimore ordinance did not penalize the mere maintenance of a nuisance; it authorized the imposition of sanctions only when the health inspector had ascertained the existence of a nuisance and had issued an abatement order which the owner thereafter wilfully disobeyed.

7/ If the Frank distinction between criminal and non-criminal searches should fall, the county's contention would of course collapse. Although two cases now pending before the United States Supreme Court (Camara v. Municipal Ct. of San Francisco, No. 92; See v. City of Seattle, No. 180 [prob. juris. noted (1966) 385 U.S. 808]) raise the question of whether the Frank doctrine should be overruled, we may assume for present purposes that the court will adhere to its holding in Frank since, as we explain below, we do not find that holding controlling under the circumstances here before us.

Clearly mindful of this aspect of the Baltimore ordinance, the court repeatedly stressed the fact that discovery of a nuisance on the premises would not, without further culpable acts on Frank's part, have supported criminal prosecution. "The attempted inspection . . . ," the court noted, "was merely to ascertain the existence of evils to be corrected upon due notification or, in default of such correction, to be made the basis of punishment." (359 U.S. at p. 362; see also p. 366.) In the present case, however, the evidence sought by the Alameda County authorities would have afforded a basis for prosecution without further action on their part or subsequent culpable conduct by the recipient.

Second, the Frank court drew a line between searches which advance the general welfare without recourse to criminal proceedings and "searches for evidence to be used in criminal prosecutions *or for forfeitures*." (Italics added.) (359 U.S. at p. 365.) Since the court thus declared that a search directed at securing evidence in aid of a forfeiture should be treated in the same manner as a search for evidence of crime, the Frank decision affords no support to the authorities of Alameda County who, by their own account, were seeking evidence of ineligibility for the express purpose of cancelling welfare benefits.

Third, the court emphasized the limited scope of the Baltimore ordinance in that it authorized searches only if the health commissioner had "cause to suspect that a nuisance exists." (See, e.g., 359 U.S. at p. 366.) In this connection, the court noted that the inspector who sought admittance to Frank's home had received reports of rats in the area and had conducted an external examination of the house which had revealed "that [it] was in an 'extreme state of decay,' and that in the rear of the house there was a pile later identified as 'rodent feces mixed with straw and trash and debris to approximately half a ton.'" (359 U.S. at p. 361.) Under these circumstances the court upheld the ordinance, observing that "[t]he power of inspection granted by the Baltimore City Code is strictly limited . . . . Valid grounds for suspicion of the existence of a nuisance must exist. Certainly the presence of a pile of filth in the backyard combined with the run-down condition of the house gave adequate grounds for such suspicion." (359 U.S. at p. 366.)

In the present case the county did not attempt to limit the searches to the homes of persons against whom the welfare authorities harbored any suspicion, reasonable or otherwise. On the contrary, a majority of the homes subjected to the raid were included solely because the authorities entertained no suspicion regarding their occupants.

Finally, the Frank court expressly limited its approval of administrative searches without warrants to those undertaken during daylight hours and without inconvenience to the occupants. Under the Baltimore City Code, the court stressed, "The inspection must be made in the day time. Here was no midnight knock on the door, but an orderly visit in the middle of the afternoon with no suggestion that the hour was inconvenient." (359 U.S. at p. 366; see also pp. 367-368.) The great gulf which separates an "orderly" afternoon visit from the searches conducted shortly after dawn in the present case would itself suffice to deprive defendant of any support from the Frank opinion.

On the basis of the foregoing analysis we conclude that the searches contemplated and undertaken in the course of the operation in the present case must be deemed unconstitutional unless the county can show compliance with the standards which govern searches for evidence of crime. The county concedes that it sought no warrants for these searches [8] and that it lacked probable cause to arrest any person in any of the homes searched, but contends that the searches took place pursuant to effective consent, freely and voluntarily given. (People v. McLean (1961) 56 Cal.2d 660, 664; People v. Burke (1956) 47 Cal.2d 45, 49.)

The alleged consent to search.

Our first task is to analyze the county's argument that the raids entailed no unlawful searches because the authorities instructed the searchers to refrain from forcing their way into any home. They were, instead, to report any refusal of entry to their superiors for such further action as might be deemed appropriate. The record indicates that, under the county's established practice, a reported refusal of entry could serve as a basis for terminating welfare benefits. The record also establishes that welfare recipients must depend to a remarkably high degree upon the continued favor of their social workers, who are vested with wide discretion to authorize or prohibit specific expenditures. [9] Accordingly, we must determine whether the threat of sanctions necessarily implicit in a request for entry under such circumstances vitiated the apparent consent which the searchers sought to secure from the occupants.

---

[8] Since the searches were made without warrants, the county of course bears the burden of justifying them. (See People v. Henry (1967) 65 A.C. 896, 898, and cases there cited.)

[9] This discretion, limited by no standard and subject to no appeal, heightens the peril faced by any

With increasing frequency the courts have denied the efficacy of any consent to a search obtained by covert threats of official sanction or by implied assertions of superior authority. The courts have been quick to note the disparity of position between a government agent and an ordinary citizen; they have taken cognizance of the threat of unspecified reprisals which inheres in the official request for admission. (See, e.g., Pekar v. United States (6th Cir. 1963) 315 F.2d 319, 324-325; Canida v. United States (5th Cir. 1958) 250 F.2d 822, 825, and cases there cited.) As the court stated in Judd v. United States (D.C. Cir. 1951) 190 F.2d 649, 651, "The Government must show a consent that is 'unequivocal and specific'

---

recipient bold enough to deny entry. Not surprisingly, none of the recipients were so daring here. (See Respondent's Reply Brief, p. 10.) In Shelton v. Tucker (1960) 364 U.S. 479, the court struck down a statute requiring teachers to report their membership in any organization, noting that "[s]uch interference with personal freedom is conspicuously accented when the teacher serves at the absolute will of those to whom the disclosure must be made--those who any year can terminate the teacher's employment without bringing charges, without notice, without a hearing, without affording an opportunity to explain." (364 U.S. at p. 486.) (Cf. Note, op. cit. supra, 67 Colum.L.Rev. 84, 93.)

[citation], 'freely and intelligently given.' [Citation.] Thus 'invitations' to enter one's house, extended to armed officers of the law who demand entrance, are usually to be considered as invitations secured by force. [Citation.] A like view has been taken where an officer displays his badge and declares that he has come to make a search [citation], even where the householder replies 'All Right.' [Citation.] Intimidation and duress are almost necessarily implicit in such situations; if the Government alleges their absence, it has the burden of convincing the court that they are in fact absent." (Accord, Channel v. United States (9th Cir. 1960) 285 F.2d 217, 219-221.)

Thus in Johnson v. United States (1948) 333 U.S. 10, the United States Supreme Court voided a conviction based upon evidence secured after the defendant had admitted officers who told her that they wanted "to talk to [her] a little bit." (333 U.S. at p. 12.) The court concluded that "[e]ntry to defendant's living quarters . . . was demanded under color of office. It was granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right." (333 U.S. at p. 13.) Similarly, in United States v.

Slusser (S.D. Ohio 1921) 270 F. 818, 819, the court declared: "The search so permitted . . . after declaration by the prohibition officer, with a display of his badge, that they were there to search the premises, was not by such consent as will amount to a waiver of constitutional rights, but, on the contrary, is to be attributed to a peaceful submission to officers of the law." (See also Amos v. United States (1921) 275 U.S. 313, 317; People v. Henry, supra, 65 A.C. 896, 900; People v. Shelton (1964) 60 Cal.2d 740, 745-746, and cases there cited.)

Our case proceeds far beyond a mere request for admission presented by authorities under color of office. Thus we need not determine here whether a request for entry, voiced by one in a position of authority under circumstances which suggest that some official reprisal might attend a refusal, is itself sufficient to vitiate an affirmative response by an individual who had not been apprised of his Fourth Amendment rights. [10] The persons subjected to the instant operation confronted far more than the amorphous threat of official displeasure which necessarily attends any such request. The request for entry by persons whom the beneficiaries knew to possess virtually unlimited power over their very livelihood posed a threat which was far more certain, immediate, and substantial. [11] These circumstances nullify the legal effectiveness of the apparent consent secured by the Alameda County searchers. [12] Both this court and the Supreme Court of the United States have recently emphasized the heavy burden which the government bears when it seeks to rely

---

[10] See United States v. Nikrasch (7th Cir. 1966) 367 F.2d 740, 744; United States v. Blalock (E.D. Pa. 1966) 255 F.Supp. 268; People v. Henry, supra, 65 A.C. 896, 900; Note, Consent Searches: A Reappraisal After Miranda v. Arizona (1967) 67 Colum.L.Rev. 130.

---

[11] In Lynumn v. Illinois (1963) 372 U.S. 528, 534, the United States Supreme Court regarded a threat that "state financial aid for [the defendant's] children would be cut off" as an important element of coercion in determining the voluntariness of defendant's confession.

[12] In a recent article devoted entirely to the problem of nighttime welfare searches, Professor Charles Reich canvasses the available authorities and concludes that "there is no theory under which it can be said that public assistance recipients consent, expressly or impliedly, to searches of their homes. The official demand for entrance is sufficient to render any apparent consent involuntary and the threat of loss of public assistance underscores the coercive nature of the demand for entry." (Reich, Midnight Welfare Searches and the Social Security Act (1963) 72 Yale L.J. 1347, 1350.) (See also ten Broek, California's Dual System of Family Law: Its Origin, Development and Present Status (1965) 17 Stan.L.Rev. 614, 670.)

upon a supposed waiver of constitutional rights. [13]
The county has not sustained that burden here.

The consequences of failure to consent.

Even if we could conclude, however, that the consent secured by the Alameda County searchers constituted a knowing and fully voluntary waiver of Fourth Amendment rights, that conclusion would not establish the constitutionality of the operation involved in this case. That operation rested upon the assumption that a welfare agency may withhold aid from recipients who do not willingly submit to random, exploratory searches of their homes; from its inception, the operation contemplated the use of such searches to threaten the withdrawal of welfare benefits from anyone who insisted upon his rights of privacy and repose. In light of the resulting pressure upon welfare recipients to sacrifice constitutionally protected rights, the ultimate legality of the operation in which the plaintiff refused to participate must turn on whether the receipt of welfare benefits may be conditioned upon a waiver of rights embodied in the Fourth Amendment.

---

[13] See, e.g., Miranda v. Arizona (1966) 384 U.S. 436, 475-476; Brookhart v. Janis (1966) 384 U.S. 1, 4, 7; People v. Stewart (1965) 62 Cal.2d 571, 581, affd. sub nom. Miranda v. Arizona, supra, 384 U.S. 436, 497-499.

In Bagley v. Washington Township Hospital Dist. (1966) 65 A.C. 540, and Rosenfield v. Malcolm (1967) 65 A.C. 601, this court recently reviewed the so-called "doctrine of unconstitutional conditions," [14] concluding that the power of government to decline to extend to its citizens the enjoyment of a particular set of benefits does not embrace the supposedly "lesser" power to condition the receipt of those benefits upon any and all terms.

When, as in the present case, the conditions annexed to the enjoyment of a publicly-conferred benefit require a waiver of rights secured by the Constitution, however well-informed and voluntary that waiver, the governmental entity seeking to impose those conditions must establish: (1) that the conditions reasonably relate to the purposes sought by the legislation which confers the benefit; (2) that the value accruing to the public from imposition of those conditions manifestly outweighs any resulting impairment of constitutional rights; and (3) that there are available no alternative means less subversive of constitutional right, narrowly drawn so as to correlate more closely with the purposes contemplated by conferring the benefit. (Bagley v. Washington Township Hospital Dist., supra, 65 A.C. 540, 542, 546-548; Rosenfield v. Malcolm, supra, 65 A.C. 601, 604; see Note, op. cit. supra, 67 Colum.L.Rev. 84, 101 & fn. 104; cf. Symposium on the Griswold Case and the Right of Privacy, op. cit. supra, 64 Mich.L.Rev. 197, 251.)

---

[14] A sampling of the more informative decisions and articles on this subject would include: Sherbert v. Verner (1963) 374 U.S. 398; Speiser v. Randall (1958) 357 U.S. 513; Hannegan v. Esquire, Inc. (1946) 327 U.S. 146; Fort v. Civil Service Commission (1964) 61 Cal.2d 331; Danskin v. San Diego Unified Sch. Dist. (1946) 28 Cal.2d 536; O'Neil, Unconstitutional Conditions: Welfare Benefits with Strings Attached (1966) 54 Cal.L.Rev. 443; Comment, Unconstitutional Conditions: An Analysis (1961) 50 Geo.L.J. 234; Note, Unconstitutional Conditions (1960) 73 Harv.L. Rev. 1595.

Although we can conceive of unusual situations in which the government might properly predicate continued welfare eligibility upon consent to unannounced early-morning searches, the record fails to develop any justification for such a condition here. Under some circumstances the county might be able to establish that a requirement of consent to such searches would facilitate the detection of frauds which deplete the welfare fund. As noted above, we would then be called upon to decide whether the benefits derived from the imposition of such a condition outweighed the corresponding impairment of constitutional rights. We could not resolve this issue upon the record now before us, because the evidence adduced in the present case fails to establish the incidence of welfare fraud or the efficacy of mass morning raids in reducing such fraud. [15]

In any event the instant operation does not meet the last of the three requirements which it must satisfy: so striking is the disparity between the operation's declared purpose and the means employed, so broad its gratuitous reach, and so convincing the evidence that improper considerations dictated its ultimate scope, that no valid link remains between that operation and its proferred justification.

We recall the crucial fact that the county authorities deliberately declined to restrict their searches to the houses of those recipients as to whom they entertained some reason, however remote, to suspect fraud. The standing orders of the Alameda County social workers required them to report all cases of suspected ineligibility to the fraud unit for further inquiry. The record establishes that the social workers consistently followed these orders, referring for investigation all cases which they had any reason to doubt, even when their suspicion rested on no more than an anonymous phone call or letter; in compiling the list of homes to be raided in the course of the operation the county authorities excluded all cases which had been referred to the fraud unit.

---

[15] By a series of doubtful rulings, plaintiff was prevented from introducing evidence which he claimed would demonstrate that such searches were neither necessary nor effective.

Moreover, the workers designated to participate in the operation were told that at least half of the homes to be searched should be chosen at random from their non-suspect cases. The remaining homes would of course be those which, despite the social workers' doubts, had not been deemed sufficiently suspect to warrant referral to the fraud unit. [16] Any welfare worker who had referred all of his doubtful cases to the fraud unit was instructed to make all of his selections at random.

In his initial testimony before the civil service commission, the county welfare director stated that he included non-suspect cases in his instructions because he had been ordered to imitate the Kern County operation and had been advised by the Kern County director that non-suspect cases were included there. Later, however, after plaintiff's counsel had indicated that he would introduce evidence that the Kern County searches had been confined to suspect homes, county counsel agreed to stipulate that "at the time that Mr. Kehoe [the Alameda County director] discussed the matter of the early morning visitations with Mr. Bell of the Social Welfare Department of Kern County . . . Mr. Bell told him that of the cases that were picked in Kern County, they had a random sampling and that there was no differentiation between the suspect cases and the non-suspect cases, but that after the early morning visitations were concluded in Alameda County . . . Mr. Kehoe had another discussion with Mr. Bell of Kern County, and at that time Mr. Bell informed him that all of the cases in Kern County were suspect."

---

[16] The testimony shows that during the pendency of the operation the standard for referrals to the fraud unit was reduced, thus further curtailing the number of suspect cases which were subject to the searches.

The record clearly shows that the Alameda County director was anxious to include non-suspect homes in order to provide a dramatic public demonstration of the efficiency of the Alameda County welfare program and the low incidence of fraud. In the interview which he conducted with plaintiff prior to discharging him, he stated: "As you well know, the ANC Program is under public fire. Something needs to be done in a dramatic way to prove the point . . . that the vast majority of these people are legitimately on the program." Similarly, in his testimony before the civil service commission the director declared: "[A]s long as a non-suspect group were to be included . . . we should try to include these in a fashion which would bring to our attention, as well as the public attention, our belief that an across-the-board look at the case load would confirm our opinion that . . . the case load by and large . . . would not show up in a bad light on a true random sample approach . . . . " 17/

However laudable the goal of the Alameda County authorities to persuade the public that the incidence of welfare fraud falls below popular estimates, we cannot accept the view that they were free to advance that objective by indiscriminate raids upon the homes of persons selected solely because their honesty could be exploited to dramatize the point which the authorities wished to

---

17/ The chief of plaintiff's division also testified that non-suspect cases were included to "give an indication or a true picture of actually what was existing in the total caseloads rather than just exactly the suspicious cases." To like effect was the testimony of the assistant welfare director, who agreed with the statement of plaintiff's counsel that "the purpose for including the non-suspect cases within the operation . . . was to demonstrate that there was no reason for fear that . . . there was undetected fraud existing among those cases . . . . "

make. [18] Even if we were to assume that a public demonstration of the contemplated type might tend to further the purposes of the welfare program, any such speculative benefit must yield before the far more immediate and substantial right of innocent persons to be secure in their homes.

In Bielicki v. Superior Court (1962) 57 Cal.2d 602, 609, we condemned a "general exploratory search" of public restrooms, noting that the "[a]uthority of police officers to spy on occupants of toilet booths . . . will not be sustained on the theory that if they watch enough people long enough some malum prohibitum acts will eventually be discovered." Yet such general exploratory searches pale beside a raid expressly directed into the homes of persons known to be under no suspicion.

Not only has the county failed to demonstrate that the scope of the raids was closely correlated to the achievement of some legitimate end, but alternate means for the detection of fraud less subversive of constitutional rights were available to the county. For example, the welfare director testified that in investigating suspect cases his workers would maintain an external watch "[u]ntil such time as there [was] sufficient indication to warrant the request to enter the home and look through it." No one has explained why such safeguards, accorded in suspect cases, were denied the non-suspect persons subjected to the operation. The foregoing factors indicate so marked a lack of congruence between the scope of the operation and the legitimate goal of reducing welfare fraud as to deprive that procedure of any constitutional justification.

---

[18] "Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent." (Olmstead v. United States (1928) 277 U.S. 438, 479 [Brandeis, J., dissenting].)

In seeking to defend the conduct of its officers, the county places great stress upon the fact that while examining the 422 homes subjected to the operation, the searchers also made inquiries into such routine matters as the amount of food in each home. Obviously, the accomplishment of these functions did not necessitate an operation of the type which the county here undertook.

The grounds for plaintiff's refusal to participate in the search.

At oral argument before this court, county counsel did not seek to establish the constitutionality of the searches but urged that, whatever the legal status of the operation, the county could still discharge plaintiff because, at the time he refused to participate in it, he had not yet learned of the unconstitutional nature of the contemplated searches.

The record supports no such claim. On the contrary, the uncontradicted evidence establishes that prior to plaintiff's refusal to participate, he had been advised of the purpose, timing, and scope of the searches, and of the fact that at least one-half of the homes to be searched would be chosen at random from non-suspect cases. Moreover, in explaining to his superiors the reasons for his unwillingness to participate, plaintiff repeatedly stated that he believed the county could not legally search the homes of those known to be under no suspicion.

The board of supervisors issued its directive concerning the initiation of the operation on November 21, 1962. Thereafter, on January 3, 1963, the plaintiff attended a briefing at which he and the other social workers were told about the objectives of the operation, its timing and scope, and the strategy of operating in pairs. At this meeting the social workers were also instructed to prepare their lists of homes for the proposed search and to choose at least one-half of the cases from among persons whom they did not suspect. [19]

After attending this briefing, plaintiff discussed his doubts with his immediate superior. The superior, appearing on behalf of the county, gave the following account of the ensuing conversations: "We discussed the whole issue in great detail for at least a week . . . . His final reply, after a week's preliminary discussion [was], 'This I cannot do.' . . . He felt that he did not wish to go on these so-called random visits, as this would appear that his clients would be guilty of something that we have no proof of . . . . He did not object to suspect cases, however, his objection was lying in the realm of the random cases as he felt this assumed a guilt on the part of the recipient that had not been proven . . . . I asked him whether he felt that his handicap would interfere with his making these calls [plaintiff is only partially sighted] or whether it was possibly one of transportation due to the hour involved; however, he felt that this was a matter of principle with him and stated, 'This, I cannot do.' . . . We discussed it a whole week trying to come up with some answer . . . to evaluate all aspects and we were unable to come to an agreement, and [hence] the subsequent outright refusal."

---

[19] After plaintiff's dismissal the social workers attended a second meeting at which they received further briefing. The only additional information given to them at the second meeting which might have affected the constitutionality of the searches was the greater stress then laid upon the need to secure the consent of the recipients before entering their homes.

After these conversations proved futile, plaintiff submitted to the division chief a memorandum citing his reasons for declining to participate in the searches. Foremost among the reasons listed was plaintiff's conviction that the searches indicated "the presumptive guilt of all recipients" and constituted "an invasion of the privacy of recipients."

Since the record establishes that the information known to plaintiff at the time he made his decision gave him reasonable grounds to believe that the operation would be unconstitutional, that he did so believe, and that the operation, as ultimately conducted, was in fact unconstitutional, we need not consider how we would decide this case had any one of these elements been missing.

We fully recognize the importance of ferreting out fraud in the inexcusable garnering of welfare benefits not truly deserved. Such efforts, however, must be, and clearly can be,conducted with due regard for the constitutional rights of welfare recipients. The county welfare department itself has now abandoned the technique of investigation which it pursued here; we may thus rest assured that it will develop other more carefully conceived procedures. It is surely not beyond the competence of the department to conduct appropriate investigations without violence to human dignity and within the confines of the Constitution.

The judgment is reversed and the cause is remanded to the trial court with directions to enter judgment in accordance with this opinion.

TOBRINER, J.

WE CONCUR:

TRAYNOR, C.J.
PETERS, J.
MOSK, J.
BURKE, J.
*PEEK, J.

---

*Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

COPY

PARRISH v. CIVIL SERVICE COMMISSION **S.F. 22429**

DISSENTING OPINION

I dissent. I would affirm the judgment for the reasons expressed by Mr. Justice Taylor in the opinion prepared by him for the Court of Appeal in Parrish v. Civil Service Commission (Cal.App.) 51 Cal.Rptr. 589.

McCOMB, J.

The Columbia University School of Social Work | *New York, N.Y. 10028*

CENTER ON SOCIAL WELFARE POLICY AND LAW
Legal Activities and Research Division

2 East 91st Street
TRafalgar 6-6300

August 24, 1966

Mr. Carl Rachlin
CORE
38 Park Row
New York, N.Y.

Dear Mr. Rachlin:

Would you be good enough to send me a copy of any document you filed in the Parrish case.

Sincerely,

Martin Garbus,
Co-Director

MG/ls

August 31, 1966

Hon. Roger J. Traynor
Chief Justice
California Supreme Court
State Building
San Francisco, California

Re: Parrish v. Civil Service Commission
S.F. 22429

Honorable Sir:

I ask leave of you to submit a brief, Amicus Curiae, in the above entitled case. The Scholarship, Education & Defense Fund For Racial Equality is as its name indicates, an organization devoted to developing leadership training programs, scholarship and legal defense for the promotion of racial equality. As a result of our interest, we spend more and more time in the area of welfare and welfare related problems. There is a close affinity, in our view, between racial equality and the administration by some welfare programs.

The Congress of Racial Equality is a nation-wide organization with chapters in many states including California devoted to the attaining of racial equality for Negro citizens and similarly is much concerned with proper administration of welfare programs. On behalf of both programs, I respectfully request permission to submit a brief Amicus Curiae. In the hope that this permission will be granted, we are at work re-writing our already finished first draft.

Respectfully yours,

CR/tp

Carl Rachlin
General Counsel

Parrish

G. E. BISHEL, CHIEF DEPUTY
DEPUTIES
JOSEPH M. ROGERS
KEITH M. HAWKES
REMO C. MATTEOLI
MARK F. THOMPSON
SAN FRANCISCO
DAVID BLOMGREN
ROBERT F. JOHNSON
LOS ANGELES
A. F. BRADOVICH
SACRAMENTO

OFFICE OF THE CLERK
Supreme Court of California
WILLIAM I. SULLIVAN, CLERK

OFFICES
SAN FRANCISCO 94102
4250 STATE BUILDING
LOS ANGELES 90012
1005 STATE BUILDING
SACRAMENTO 95814
108 LIBRARY AND COURTS BUILDING

San Francisco, California
September 2, 1966

Mr. Carl Rachlin
General Counsel, CORE
150 Nassau Street
New York, N.Y. 10038

Re: S.F. 22429 - Parrish v. Civil Service Comm.

Dear Sir:

Your letter of August 31, addressed to the Chief Justice, has been referred to me for answer.

Any request to file an amicus curiae brief in a case must be made by a person admitted to the practice of law in California inasmuch as the filing of such a brief constitutes the practice of law. Our Roll of Attorneys does not disclose your name and under the circumstances we can only suggest that any application to file an amicus brief in the above case should be made by a member of the California Bar. If the application is granted the brief must carry the name of the California attorney and your name, if desired, may be placed thereon as Of Counsel.

Very truly yours

William I. Sullivan

WILLIAM I. SULLIVAN
Clerk of the Supreme Court

WIS:hm

Called
Kent Jacobs
Asked to be ready
to act as our
Calif counsel

September 8, 1966

John Somers, Esq.
10 East 40th Street
New York, New York

Re: Parrish v. The California Civil Service Commission

Dear John:

I enclose (1) a draft of brief in the above entitled case and (2) the proposed brief of the appellant himself which has as an appendix the opinion of the District Court of Appeals, State of California First Appellate District. I have read over the brief rather carefully as well as the opinion of the District Court of Appeals. I hope my markings on the opinion of the District Court of Appeals don't interfere with your independent reading of the opinion.

As I mentioned to you on the telephone the other day, I am dissatisfied with our draft brief. I find it excessively wordy and it does not always come to grips with the problem. There is material in it, however, that could be useful particularly, so far as the research is involved; so that your research can be kept to an absolute minimum.

My general view of the handling of this case, which involves a welfare worker who refused to participate in a week-end Sunday raid on welfare receipiants to ascertain whether there was a violation of the California Aid To Needy Children Program. This is set out in some detail in the Court Opinion and will be useful in reading it. There are important civil rights and civil liberties involved in this case that we are anxious to put forward.

continued

I'm incline to think that after a very general statement of the facts because there is not much serious disagreement about the facts themselves, but the conclusions to be drawn from them, we ought to outline, perhaps as follows:

(1) The reliance of the District Court of Appeal in affirming the Lower Court discharge. That is the Lower Court sustaining the discharge. The thought that the welfare worker might have obtained the consent of the welfare family is bad law, in part because a consensual relationship can only be based upon relatively independant parties, each having the capacity to make an independent decision. There are plenty of anologies in the law to show that certain types of parties are not given the option to consent or reject because of their status in society. The most obvious one, for example, is the girl under 18 who is not permitted to consent to a sexual relationship. Similarly, the relationships between trustees and beneficiaries. The relationships between sellers of goods and children. The relationship of parties who are considered incompetent to make a decision all illustrate that there cannot be consent when one of the parties is incapable of making a consent or dependent upon the other party in such a way that a consent offered cannot be seriously considered as being freely given. And so in the case before us, the person involved obviously is completely dependent for his complete subsistance upon the welfare worker and to say that he has freely given a consent at 6:30 in the morning cannot be taken seriously; (a) because who, what free person freely consents to an admission to his house at 6:30 in the morning and (b) the other dependents of the welfare receipient upon the worker indicates that consent is a meaningless view under the circumstances. Our draft brief should have some useful material on that even if it is repetitive but it can be called out.

(2) It is very clear from the nature of the activities of the Welfare Department that they were attempting to find out whether a crime had been committed under California law. Not only were they attempting to decide whether a person was properly receiving welfare assistance but also whether there was a violation of the criminal statutes for receiving money improperly. They came without a

continued

warrant even though there axe were in the nature of police and and even though it would be presumably referred to the District Attorney if there had been a violation. Behind, thus, without a warrant but holding the threat of criminal liability the welfare recipients are being put in the position where if they do not permit the entry of the worker they are in danger of losing their welfare assistance. If they do permit the entry of the worker they are being required to waive Fourth Amendment right. This, in line with the recent Miranda case, there cannot be an intelligent waiver of the right unless there is a clear indication on the part of the authorities that the party knowing all the possibilities has waived this right. Here there was no explanation nor was there required to be any explanation.

In addition, they are also being asked to waived also a possible Fifth Amendment right for the same reasons.

(3) I think that an analysis of the Opinion of the District Court of Appeal might be useful. It shows as I mentioned above, that the welfare worker in advance did not have the right to refuse to make the search because the people might have consented. Also they might have waived any constitutional rights. I have underlined various parts of the Opinion which might be worth commenting upon. For example, on page IX at the bottom the Court says the worker was asked to explain the purpose of the call to the recipient and to seek permission but no where does it say that they were to advise the people of their right to refuse and so forth . In addition, implicit throughout the Opinion is the idea that consent might have been obtained voluntarily. But the question comes up is how would you ever know that it was obtained voluntarily when there is this dependenceof one upon the other and when the rights are not explained carefully to the parties. The trend of the law has been more and more to protect the weak and the young. To go back to my first example, in earlier days statutory rape may have commenced at age of 10 or 12. In most jurisdictions it is now up to 16 and 18. In the whole field of crime we have raised the ages when persons are considered competent to have knowingly committed a crime. We also protect the weak and the incompetent and this is an area where people should not even be put in the position of having to consent because of the consequences to them if the worker

continued

Mr. John Somers
10 East 40th Street
New York, New York

withdraws support as he has the power to do; even assuming it is not used improperly. On page X Opinion, the Courts says under these circumstances we are not prepared to conclude in the absence of the specific factual showing to the contrary that consent could only have been obtained improperly, that the receipients had no alternative but to submit to a search. The tenure of the opinion in the recent Miranda case involving similar problems which the United States Supreme Court decided a few months ago indicates a view which I think is quite contrary to this point of view of the District Court of Appeal.

I do not think that we need a very long brief but one that takes up sharply these questions. Particulary developing the idea of the nature of consent. No where in the Opinion or in the main brief do I see a satisfactory discussion of the nature of consent. Who are parties that philosphically may consent to some kind of arrangement? Obviously, a person who consents under duress is not consenting. Is this duress? Can economic duress be sufficient particularly where combined with a kind of thread of possible criminal action.

Thank you for undertaking this John. It's a very interesting case and I want us to submit a brief but short but pointedly argued paper which I am sure you can do . If there is any further research that you want let us know and we will somehow get it done for you. I think, however, the stress will be on the nature of consent since the same kind of argument would also apply to the capability of a person to waive a Fouth and Fifth Amendment argument.

With warm regards.

Sincerely,

CR:tp:vh

September 9, 1966

Miss Ruth Jacobs
1255 Post Street
San Francisco, California

Re: *Parrish v. Civil Service Commission*
of California

Dear Ruth:

Thank you for agreeing to appear as counsel in the Parrish case which Al Bendich is handling for the appellant. In all candor, his brief is not a very good one. It is long but somewhat jumbled and hopefully the brief we will serve a useful function before the Supreme Court of California.

The case concerns Mr. Parrish, a county welfare worker who after receiving instructions to make a Sunday raid on his cases to find out whether there were violations of the Aid To Needy Children Program of California, refused to do so and was discharged for insubordination. His discharge was upheld inside the Civil Service Commission. He brought an action in the nature of mandamus which was denied. On appeal to the District Court of Appeals, the refusual to reinstate him was affirmed with a rather long and somewhat garbled opinion and it is this opinion that is being appealed to the Supreme Court of California.

We are appearing on behalf of the Scholarship, Education and Defense Fund For Racial Equality and the Congress of Racial Equality. Both organizations are concerned with the welfare of Negro citizens and the denial of equal rights and protection which has historically been given to them. We have a particular concern in welfare problems because so large a percentage of welfare recipients are Negro. The issue itself is also very important because upholding the right

continued

of a Welfare agency operated by the County and/or the State involves, in our view, a serious invasion of the rights of all citizens. It happens only in these cases because the people involved are poor and largely Negro and sadly, many Welfare organizations do not think they have any rights as a result.

The opinion of the District Court is based upon two main theories. (1) That the welfare worker should have presented himself at each person's house and asked permission to get in because he might have received consent. To this we say that it is unfair to put people who are economically, socially and culturally dependent upon the welfare worker to be presented with a question of consent. For example, we do not ask an infant whether he consented to the making of a contract involving the purchase of a television set. We do not permit him to consent. Nor do we permit incompetence to consent nor do we permit girls under the age of 18 to consent to sexual relationship. There are numerous other areas where consent, even though given in fact, is not recognized as a matter of law. This is something which has to be spelled out in great detail both historically and legally as exists today. For example, take the matter of statutory rape. Many years ago the age was 10 or 12. The law has broadened socially to recognize that the age should be 18. The umbrella of the law is being expanded to cover youngsters up to the age of 18. So, we hope to urge the court that consent is an improper base upon which to hold the discharge of the worker who refuses to make the raid.

There is a second major argument which is not altogether clear in Bendich's brief. It is separate and distinct from consent but related to it and that is the question of the waiver of rights under the Fourth and Fifth Amendments to the United States Constitution and any California equivalent. If people have been guilty of a violation of the Aid To Needy Children Program of California there are possible criminal sanctions resulting thr therefrom. When the Welfare Worker comes along, holding the purse strings, over the beneficiary and he doesn't explain to the beneficiary what his rights are, merely why he's coming to visit, it is unfair to say that the welfare recipient may waive his rights to refuse to permit a search without a warrant or that he may waive his similar rights under the Fifth Amendment. The recent cases in the Supreme Court of the United States that t there has to be a very clear understanding of the issues involved before there can be a waiver. Now, I would like to urge that in a case of this kind, where there is an economic dependency of the recipient upon the welfare worker there should not be any consideration given to the concept of waiver at all.

These are the two major issues in the case that we would like to urge in a brief. To some extent, of course, they are covered by Bendich, but frankly not adequately. I don't know how you would say this in your application but I think the way to handle it perhaps is to say that we wish to develop the historical concept of waiver and to show its improper reliance by the Court and similarly this would be true of the concept of consent.

In any event, thank you again for agreeing to make the request for us. It is an important case and we are anxious to submit a brief which will be useful to the Supreme Court of California.

With warm personal regards, I hope to see you perhaps by the end of the month.

Cordially,

Carl Rachlin
General Counsel

CR/vh

RUTH JACOBS
ATTORNEY AT LAW

SUITE 700
VAN NESS-POST CENTER
1255 POST STREET
SAN FRANCISCO 9, CALIFORNIA
ORDWAY 3-3775

COPY

September 13, 1966

Honorable Roger J. Traynor,
Chief Justice
Supreme Court
State of California
State Building
San Francisco, California

Re: Parrish vs Civil Service Commission of California
No. SF 22429

Dear Sir:

I hereby respectfully request permission to file an amicus curiae brief in the above-entitled cause on behalf of The Scholarship, Education and Defense Fund for Racial Equality, and The Congress of Racial Equality.

I am familiar with the record and have read the briefs on file. The material in the amicus curiae brief is not repetitious and I believe there is a necessity for additional argument on the following points:

1. "Consent" of welfare recipients is an improper basis upon which to uphold the discharge of the social worker who refuses to make the unscheduled visits to such recipients. It is unfair to put people who are economically, socially and culturally dependent upon the welfare worker in the position where they are presented with a question of consent. For example, neither minors nor incompetents are permitted by law to consent, and even if their consent is given in fact, such consent is not recognized as a matter of law.

2. Related to the question of consent, is the question of the waiver of rights under the Fourth and Fifth Amendments to the United States Constitution. Can the welfare recipient waive his rights if he does not know what his rights are and the welfare worker does not explain to the recipient what his rights are. There must be a clear understanding of the issues involved

before there can be a waiver. The amicus curiae brief proposes to develop the historical concept of waiver and to show improper reliance on it by the Court.

It is our view that such an operation of the welfare agency as is before the Court involves a serious invasion of rights of all citizens, as well as those of appellant. We believe that our brief will be of assistance to the Court in reaching a decision.

I therefore request that an Order issue permitting us to file the amicus brief.

Respectfully submitted,

Ruth Jacobs

RJ:lt

RUTH JACOBS
ATTORNEY AT LAW

SUITE 700
1255 POST STREET
SAN FRANCISCO, CALIFORNIA 94109
ORDWAY 3-3775

September 16, 1966

Carl Rachlin, Esq.
CORE
150 Nassau Street
New York, N. Y. 10038

Re: PARRISH vs. CIVIL SERVICE COMMISSION

Dear Carl:

I am enclosing a copy of a notice received from the Supreme Court concerning the Parrish case.

Would you please forward the brief to me on or before September 22, 1966. I'll be out of town the following week

Yours,

Ruth

(Mrs.) RUTH JACOBS

RJ/jag

Enclosure

LAW OFFICES

BLUMENTHAL, SOMERS & GOLDSTICK

ALBERT H. BLUMENTHAL
JOHN C. SOMERS
DAVID T. GOLDSTICK

BENNET M. BLUMENTHAL
COUNSEL

10 EAST 40TH STREET, NEW YORK, N.Y. 10016

TELEPHONE: 683-8650

September 20, 1966

Carl Rachlin, Esq.
Scholarship, Education and Defense
Fund for Racial Equality
150 Nassau Street
New York, New York

Re: Parrish v. Civil Service Commission
Amicus Brief - CORE

Dear Carl:

I am enclosing an original and one copy of the proposed Amicus Brief.

I am also returning the papers you submitted. Unfortunately, I started fresh, used some cites and several paragraphs. I hope no one will be displeased.

Kindest personal regards.

Sincerely yours,

BLUMENTHAL, SOMERS & GOLDSTICK

BY: John
John Somers

JS:na
SPECIAL DELIVERY
CERTIFIED MAIL, R. R. R.

September 22, 1966

file

Ruth Jacobs, Esq.
2500 Filbert Street
San Francisco, California

Dear Ruth:

Enclsoed is draft of Parrish brief. Let me have your thoughts. Must we print or can we Xerox? How many copies must we have? How many do you want? We will list as "of counsel" (you being Counsel):

Edward Sparer
John Somers
Carl Rachlin
Martin Garbus
Stephen M. Nagler

We will print or Xeros as you advise.

Love to Paul.

Yours,

Carl Rachlin
General Counsel

CR:tp
Encl.

MARVIN RICH
33-43 14 Street
Long Island City 6, New York

re WILL
for Rich

September 29, 1966

Dear Carl,

Do you think that this will do? If not please be specific about what you want the doctor to say. Margaret says that he was not very cooperative.

evie

Evie

Parrish

RUTH JACOBS
ATTORNEY AT LAW

SUITE 700
1255 POST STREET
SAN FRANCISCO, CALIFORNIA 94109
ORDWAY 3-3775

March 29, 1967

Carl Rachlin, Esq.
General Counsel
Scholarship, Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Dear Carl:

The State Supreme Court handed down its favorable decision in the Parrish case yesterday. I am enclosing a copy of the Opinion for you. It is the only one I have received so hang on to it in case we need it later on.

Would you also pass it on to Mr. Martin Garbus. He's the one who wrote to me last month about the Opinion.

Congratulations. You did it again.

It was lovely to see you and I do hope you can permanently make it to California.

Love,

Ruth

(Mrs.) RUTH JACOBS

RJ/jg

Enclosure

July 7, 1967

Louis Berry, Esquire
1406 Ninth Street
Alexandria, Louisiana 71301

Dear Louis:

Enclosed is a copy of the brief in the [illegible] case, which I hope will be of some use to you.

Obviously, you are free to call upon us to help you in any way.

With warm personal regards,

CARL RACHLIN

CR:m
Encl. (1 Brf.)

July 7, 1967

Murphy W. Bell, Esquire
971 South Thirteenth Street
Baton,Rouge, Louisiana

Dear Murphy:

Enclosed is a copy of the brief in the Parrish case, which I hope will be of some use to you. Obviously you are free to call upon us to help you in any way.

Murphy if you would like us to help with respect to your facility case let me know.

With warm personal regards,

CARL RACHLIN

[illegible]
Encl. (1Brf.)

July 7, 1967

Johnnie Jones, Esquire
530 South Thirteenth Street
Baton Rouge, Louisiana

Dear Johnnie:

Enclosed is a copy of the brief in the PARRISH case, which I hope will be of some use to you.

Obviously, you are free to call upon us to help you in any way.

With warm personal regards,

CARL RACHLIN

CR:ca
Encl.(1Brf.)

Parrish file

ALBERT M. BENDICH
ATTORNEY AT LAW

OF COUNSEL
WELLS & CHESNEY
ATTORNEYS AT LAW

PLEASE REPLY TO:
☒ 2550 TELEGRAPH AVENUE
BERKELEY, CALIFORNIA
(415) 849-4010

☐ 1856 COLFAX STREET
CONCORD, CALIFORNIA
(415) 687-1212

7 July 1967

Stephen Nagler
Scholarship, Education & Defense
Fund for Racial Equality
150 Nassau Street
New York, New York 10038

Dear Mr. Nagler:

In July of 1966, my secretary mailed to your office at the above address, in care of a Mr. William Resnick, two separately packaged volumes of the Parrish v. Civil Service Commission transcript. Apparently both packages were lost in the mail, and only one has been recovered.

If you have any idea of the whereabouts of the other transcript, please let me know. Although I'm addressing this inquiry to you, I'm most anxious to have it forwarded to Mr. Resnick. Please give me any current address you may have for him.

Yours very truly,

Albert M. Bendich

Albert M. Bendich

AMB:mm

July 13, 1967

Albert M. Bendich
Attorney At Law
Wells & Chesney
2550 Telegraph Avenue
Berkley, California

Dear Mr. Bendich:

William Resnick attended Harvard Law School and worked for us as a student intern last summer. He comes from Madison, Wisconsin. We have no idea of his whereabouts since we have not heard from him since September, 1966. I have no reason to believe however, that he knows any more about the lost volume of the transcript than we do.

We have tried repeatedly to find this volume and have failed completely. It does not seem to have reached our office.

I am sorry that we can not be more helpful at this time.

Very truly yours,

Stephen M. Nagler

1-Mass Raids at 6:30 A.M. without a glimmer of probable cause on a large class of people nearly randomly chosen duplicate the illegal conduct that the fourth amendment was intended to outlaw.

The Fourth Amendment reads:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

As is true of most constitutional standards, the Fourth Amendment in prohibiting "unreasonable searches and seizures" speaks in general terms and thus demands judicial interpretation But courts have encountered no difficulty in declaring some ~~x~~ conduct, in particular the species of search the amendmnt was designed to outlaw, totally unreasonable.

In BOYD v. U.S. 116 U.S. 616, 624-625 the court stated:

In order to ascertain the nature of the proceedings intended by ~~x~~ the Fourth Amendment to the Constitution under the terms "unreasonable searches and seizures it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and in ~~Engld~~ England. The practice had obtained in the colonies of issuing writs of assistance to the revenue officers, ~~empowerig~~ empowering them, in their discretion, to search suspected places for smuggled goods, which James Otis pronounced the worst instrument of arbitrary power, the most destructive of English liberty and fundamental principles of law that ever was found in an English lawbook; since they placed "the liberty of every man in the hands of petty officers"

In NUELSEIN v. D. of C. 73 App DC 85,87, 115 F2d 690, 692, the court says "Although the Fourth Amendment was written against the background of the general warrants in England and the writs of assistance in the American colonies", it "gives a protection wider than these abuses" and thus at least as wide.

The characteristics of the general warrants and the writs of assistance can be gathered from the following three sources:

1-Virginia in 1776 in her declaration of right quoted in NUESLEIN v. D of C 115 F2d 690, 693 announced:

"X That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any persons or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

1. VA. Compiled Laws 1776-1803 (2ed 1814) p.2

2-The general warrant condemned in Entich v. Carrington 19 Howell's St. Tr. Col. 1029 issued in 1763 gave general authority to do hat was necessary to apprehend the authors and printers of an acid commentary on a speech by the ~~kjm~~ king.

3-A recent discussion of the Fourth Amendment in Stanford v. Texas 379 U.S. 476, 481 (1965) states:

Vivid in the memory of the newly independent Americans were those general warrants known as writs of assistance under which officers of the Crown had so bedeviled the Colonists. The hated writes of assistance had given customs officials blanket authority to search where they ~~pm~~ pleased for goods imported in vi violation of the British tax laws.

It is clear that the right whichthe Welfare Department assumes today, to go where they wish, without any showing of cause or application of warrant, to invade the privacy of a large group of people only justified by the vision of crime somewhere by somebody in this group nearly duplicates the writs of assistance.

The general approach of the British to their colonials and the Welfare Department to its colonized recipients seems to be that as long as a crime is being committed by somebody in a class like importers, or ___________, or welfare recipients the Crown may "place the liberty of ebery man in the hands of petty officers," swoop down, knock at any door without a shred of cause, trample rights of privacy, intimidate, frighten, "search under beds" to its hearts content. Indeed these raids, which might have occurred right before the revolution, anachronisms in days of anxiety over hidden microphones and transistorized spies, may be more oppressive than the old English practice. The targets of the writs of assistance were primarily shops and storehouses and the raids were conducted with some suspicion, whereas today's welfare raiders exclusively attack homes and as recited in the lower court opinion, these raids were conducted, unbelievable as it may beem, "in order to make a better overall statistic" The British had little compulsion to gather statistics at 6:30 in the morning.

The sole difference between today's welfare raid and the writs of assistance is that the welfare raiders were instructed to request consent to enter. But in many cases the consent given could only be a result of coercion. More important, the essential vices of the 6:30 welfare raids and the writs of assistance are the same; they both mean intimidation, assertion of unbounded government authority, the arbitrary knock on the door, and trampling the privacy and security of the victim.

Firther courts have recognized that consent is not incompatible with the practice of the general warrant, that even though consent has been gained, the police conduct still so closely resembles the general warrant that the police practice could not be condoned. In KIRSCHEINBLATT v. U.S. 16 F2nd 202,203 L. Hand said "Whatever the casuistry of border cases, it is ~~broadly~~ broadly a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him, once you have gained lawful entry, either by means of a search warrant or by consent. The second is a practice which English speaking peoples have thought intolerable for over a century and a half. It was against general warrants of search......that the decisions were directed.

The recent case of lankford v. Gelstern decided June 23, 1966 by the U.S. Cercuit Court of Appeals for the Fourth Circuit, in which an injunction was issued to prohibit conducting of illegal mass searches, supports the conclusion that the possibility of consent can not legitimate deliberate mass raids without any cause. The police defendants in Lankford conducted over 300 searches in Baltimore at all hours of the day and night, primarily on the basis of uncorroborated, anonymous calls and tips. The trial disclosed variations in the police raids - some officers politely requested entry while others entered by force. Thepolice testified that officers who were to "gain admission" were instructed to explain their mission and purpose. The trial ~~disclosed variations in the police raids~~ court found "Few stated any objection to the entry; some were quite willing to have the premises searched..., while others acquiesced because of the show of force. "240 F. Supp. 550 (D. Md. 1965), 555, quoted on page 5 of the opinion of the Court of Appeals. Yet the Circuit Court did not find that the possibility of consent (and the consents found to have occurred in some cases) validated the police conduct. The order to the district court to grant an injunction did not state that the police could search without any cause as long as they were very polite and knocked on each door. The court didn't say that mass raids on homes without any cause are legitimate as long as you utter the formulas of consent at every door. The order for injunction reads: The case will be remanded for the entry of a decree enjoining the Police Department from conducting a search of any private house to effect the arrest of any person not known to reside therein, whether with or without an arrest warrant, where the belief that the person is on the premises is based only on an anonymous tip and hence without probable cause. In justifying the injunction and restraining the police, the court emphasizes precisely the disturbing elements of this case: the invasion of privacy, the total absence of cause, the mass scale, and that all this was in effectuation of policy and plan.

Thus on p.11, in discussing the practice Judge Sobeloff says, "This case reveals a series of the most flagrant invasions of privacy ever to come under the scrutiny of a federal court." "The parties seeking redress have committed no acts warranting violation of the privacy of their homes; there has never been any suspicion concerning them or their associations.

On p. 14 the court says, "These raids were not isolated instances undertaken by individual police officers. They were rather the effectuation of a plan conceived by high ranking officials. All members of the Police Department, from the commissioner down to the raw recruit, are expected to be familiar with the principle that if the police intend to conduct a search of a man's home for a suspect, they must,at least, have probable cause to believe that he is on the premises. The doctrine is not subtle; it touches the very heart of law enforcement practices, and has found expression in numerous judicial opinions. Its force could not have escaped the Commissioner and other members of the police hierarchy, yet the raids were carried on relentlessly for 19 days.

On p.17 the court continues, "After so vast a demonstation of disregard of private rights, the complainants are entitled to a clear response. While the immediate pressure of wholesale raids has been withdrawn, the practice of indescriminate searches of homes has been renounced only obliquely, if at all, and the danger of prepetition has not been removed. The sense of impending crisis in police - community relations persists, and nothing would so directly ameliroate it as a judicial decree forbidding thex practices complained of ."

The clear implication is that the police are going to need some evidence before they have a right to disturb people and request searches. The gravamen of the illegality was not the lack of consent, not that the police didn't act politely and utter formulas at the door, but that these searches are in complete disregard of private rights, that they were indescriminate and unjustified by a shred of cause, and that they were pursuant to deliberate plan. The conduct enjoined in Lankford, and the conduct of the Welfare Department in this case, is the conduct James Otis denounced in 1770 and which has been regularly denounced throughout our history. This assault on the Fourth Amendment must be turned back. Accepting the Welfare Department's contention that the possibility of consent validates these mass raids means a return to pre-Fourth Amendment practice of arbitrary raids by petty goverment officers without cause or warrant on large numbers of homes to search for imagined and speculative violations. Many would lament the judicial repeal of the Fourth Amendment.

The recent case of Lankford v. Gelstein decided June 23, 1966 by the U.S. Circuit Court of Appeals for the Fourth Circuit, in which an injunction was issued to prohibit conducting of illegal mass searches, [redacted] supports the conclusion that the possibility of consent can not legitimate deliberate mass raids without any cause. The police defendants in Lankford conducted over 300 searches in Baltimore at all hours of the day and night, primarily on the basis of uncorroborated, anonymous calls and tips. The trial disclosed variations in the police raids—some officers politely requested entry while others entered by force. The police testified that officers who were to "gain admission" were instructed to explain their mission and purpose. The trial court found "Few stated any objection to the entry; some were quite willing to have the premises searched..., while others acquiesced because of the show of force." 240 F. Supp. 550 (D. Md. 1965), 555, quoted on page 5 of the opinion of the Court of Appeals. Yet the Circuit Court did not find that the ~~consents~~ possibility of consent (and the consents found to have occurred in some cases) validated the police conduct. ~~[illegible]~~ The order to the district court to grant an injunction did not state that the police could search without any cause as long as they were very polite and knocked on each door. The court didn't say that mass raids on homes without any cause are legitimate as long as you utter the formula of consent at every door. The

(OVER)

⑧ reads: The case will be remanded for the entry of a decree enjoining the Police Department from conducting a search of any private house to effect the arrest of any person not known to reside therein, whether with or without an arrest warrant, where the belief that the person is on the premises is based only on an anonymous tip and hence without probable cause. In justifying the injunction and restraining the police the court emphacizes precisely the disturbing elements of this case: the invasion of privacy, the total absence of cause, the mass scale, and that all this was in effectuation of policy and plan.

Thus on p. 11 in discussing the practice Judge Sobeloff says, "This case reveals a series of the most flagrant invasions of privacy ever to come under the scrutiny of a federal court." "The parties seeking redress have committed no acts warranting violation of the privacy of their homes; there has never been any suspicion concerning them or their associations,

On p. 14 the court says, "These raids were not isolated instances undertaken by individual police officers. They were rather the effectuation of a plan conceived by high ranking officials. All members of the Police Department, from the commissioner down to the raw recruit, are expected to be familiar with the principle that if the police intend to conduct a search of a man's home for a suspect, they must at least have probable cause to believe that he is on the premises. The doctrine is not subtle; it touches the very heart expression in numerous judicial opinions. Its force could not have escaped the Commissioner and other members of the police hierarchy, yet the raids were carried on relentlessly for 19 days.

On p. 17 the court continues, "After so vast a demonstration of disregard of private rights, the complainants are entitled to a clean response. While the immediate pressure of wholesale raids has been withdrawn, the practice of indescriminate searches of homes has been renounced only obliquely, if at all, and the danger of repitition has not been removed, the sense of impending crisis in police-community relations persists, and nothing would so directly ameliorate it as a judicial decree forbidding the practices complained of."

The clear implication is that the police are going to need some evidence before they have a right to disturb people and request searches. The gravamen of the illegality was not the lack of consent, not that the police didn't act politely and utter formulas at the door ~~the gravam~~, but that these searches are in complete disregard of private rights, that they were indescriminate and unjustified by a shred of cause, and that they were ~~acting~~ pursuant to ~~[illegible]~~ deliberate plan. ~~[illegible]~~ The conduct enjoined in Lankford, and the conduct of the Welfare Department in this case, is the conduct James Otis denounced in 1770 and which has been regularly denounced throughout our history. This assault on the Fourth Amendment must be turned back. Accepting the Welfare Department's contention that the possibility of consent validates these mass raids means a return to pre-Fourth Amendment practice of arbitrary raids by petty government officers without cause or warrant on large numbers of homes to search for imagined and speculative violations. Many would lament the judicial repeal of the Fourth Amendment.

① MASS RAIDS AT 6:30 A.M. WITHOUT A GLIMMER OF PROBABLE CAUSE ON A LARGE CLASS OF PEOPLE NEARLY RANDOMLY CHOSEN DUPLICATE THE ILLEGAL CONDUCT THAT THE FOURTH AMENDMENT WAS INTENDED TO OUTLAW.

The Fourth Amendment reads:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

~~The Fourth~~ As is true of ~~Our~~ most constitutional standards, the Fourth Amendment in prohibiting "unreasonable searches and seizures" speaks in general terms and thus demands judicial interpretation. But courts have encountered no difficulty in declaring some conduct, in particular the species of search the amendment was designed to outlaw, totally unreasonable.

In BOYD v. U.S. 116 U.S. 616, 624-625 the court stated:

> In order to ascertain the nature of the proceedings intended by the Fourth Amendment to the Constitution under the Terms "unreasonable searches and

it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and in England. The practice had obtained in the colonies of issuing writs of assistance to the revenue officers, empowering them, in their discretion, to search suspected places for smuggled goods, which James Otis pronounced 'the worst instrument of arbitrary power, the most destructive of English liberty and fundamental principles of law that ever was found in an English lawbook;' since they placed "the liberty of every man in the hands of petty officers."

In NUESLEIN v. D. of C. 73 App. DC 85, 87, 115 F2d 690, 692, the court says, "Although the Fourth Amendment was written against the background of the general warrants in England and the writs of assistance in the American colonies," it "gives a protection wider than these abuses;" and thus at least as wide.

The characteristics of the general warrants and writs of assistance can be gathered from the following three sources:

① Virginia in 1776 in her declaration of right quoted in NUESLEIN v. D of C 115 F2d 690, 693 announced:

"X. That general warrants, whereby any

officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

I. Va. Compiled Laws 1776-1803 (2ed 1814) p.2

② The general warrant condemned in Entick v. Carrington, 19 Howell's St. Tr. col. 1029 issued in 1763 gave general authority to do what was necessary to apprehend the authors and printers of an acid commentary on a speech by the King.

③ A recent discussion of the Fourth Amendment in Standford v. Texas 379 U.S. 476, 481 (1965) states:

Vivid in the memory of the newly independent Americans were those general warrants known as writs of assistance under which officers of the Crown had so bedeviled the Colonists. The hated writs of assistance had given customs officials blanket authority to search where they pleased for goods imported in violation of the British tax laws.

It is clear that the right which the Welfare Department assumes today, to go

①

where they wish, without any showing of cause or application of warrant, to invade the privacy of a large group of people only justified by the vision of crime somewhere by somebody in this group nearly duplicates the writs of assistance. The general approach of the British to their colonials and the Welfare Department to its colonized recipients seems to be that as long as a crime is being committed by somebody in a class like importers, or planters, or welfare recipients the Crown may "place the liberty of every man in the hands of petty officers," swoop down, knock at any door without a shred of cause, trample rights of privacy, intimidate, frighten, "search under beds" to its hearts content. Indeed, these raids, which might have occurred right before the revolution, anachronisms in days of anxiety over hidden microphones and transistorized spies, may be more oppressive than the old English practice. The targets of the writs of assistance were primarily shops and storehouses and the raids were conducted with some suspicion, whereas Today's welfare raiders exclusively attack homes and, as recited in the lower court opinion, these raids were conducted, unbelievable as it may seem, "in order to make a better overall statistic." The British had little compulsion to gather statistics at 6:30 in the morning.

The sole difference between today's welfare raid and the writs of assistance is that the welfare raiders were instructed to request consent to enter. But in many cases the consent given could be only a result of coercion. More important, the essential vices of the 6:30 welfare raids and the writs of assistance are the same; they both mean intimidation, assertion of ~~[illegible]~~ unbounded government authority, the arbitrary knock on the door, and trampling the privacy and security of the victim.

Further courts have recognized that ~~[illegible]~~ consent is not incompatible with the practice of the general warrant, that even though consent has been gained, the police conduct still so closely resembles the general warrant that the police practice could not be condoned. In ~~[illegible]~~ KIRSCHENBLATT v. U.S. 16 F 2nd 202, 203 L. Hand ~~[illegible]~~ said, "Whatever the casuistry of border cases, it is broadly a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him, once you have gained lawful entry, either by means of a search warrant or by consent. The second is a practice which English speaking peoples have thought intolerable for over a century and a half. It was against general warrants of search [illegible] ....that the decisions were directed.

Thus courts have long recognized that the Fourth Amendment is central to the maintenance not only of individual rights but of our free institutions. ~~Searches undertaken without~~ And that vitiating Fourth Amendment rights is a great threat "to a society which chooses to dwell in reasonable security and freedom from surveillance." This expresses the fact that when one man's rights are endangered, then every man is threatened, and this is particularly true when the illegality is pursuant to plan and policy. ~~In a society in which~~ Government ~~in the economy~~ disbursements by means of welfare grants, subsidies, licenses, rent payments, poverty programs, loans, franchises, contracts ~~are~~ growing greatly, the

Any claim of the right by the person who distributes the largesse to search and investigate at any hour without a glimmer of cause ~~threatens~~ a great number of Americans with government surveillance and control incompatible with the exercise of personal freedom.

These raids pursuant to plan must not be permitted. And courts have regularly disallowed police conduct which could become a practice. For instance in U.S. v. KIRSHENBLATT, 16 F2d 202, 203 the court states: Nor should we forget that what seems fair enough against a squalid huckster of bad liquor may take on a very different form, if used by a government determined to suppress political opposition under the guise of sedition."

If this conduct is approved, ~~[illegible] [illegible] [illegible] unprecedented [illegible]~~ every person who shares in our governments prosperity will be subject to the 6:30 invasion by just the person who dispenses ~~[illegible]~~ the bounty. This is an unprecedented invasion of Fourth Amendment rights. ~~The consent exception may well be applicable~~ It may be ~~that~~ consent can validate illegal searches of one home when the party searched voluntarily waives his own rights. But the possibility of gaining consent should not be allowed to legitimate a practice that threatens ~~almost all~~ Americans. These raids are not mere invasions of individual rights, invasions that can be consented to. These raids strike at the security of all Americans and threaten the basis of our free institutions; ~~[illegible]~~ consent by the immediate victims can not ~~dispel the illegality.~~ diminish the danger nor dispel the illegality.

② Arbitrary and illegal search and seizure not
only erode personal and community security
but also in degrading and terrifying its
victims create resentment, desperation, and
anarchy. The antagoniums and destruction of
confidence in authority engendered by these raids
constitutes a great danger to society. This
has been recognized in many opinions.

Nothing can destroy a government more
quickly than its failure to observe its own
laws, or worse, its disregard of the
Charter of its own existence. MAPP v. OHIO
376 U.S. 643, 659.

Justice Brandeis' classic dissent in
OLMSTEAD v. U.S., 277 U.S 438, 485 describes
the instructive effect of ~~[illegible] illegality~~
government illegality.

In a government of laws, existence of
the government will be imperiled if it fails to
observe the law scrupulously. Our government
is the potent, the omnipresent teacher. For good
or for ill, it teaches the whole people by its
example. Crime is contagious. If the
government becomes a lawbreaker, it breeds
contempt for the law; it invites every
man to become a law unto himself; it
invites anarchy. To declare that in the administration
of the criminal law the end justifies the
means — to declare that government may commit
crimes in order to secure the conviction of

a private criminal — would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.

Recently in LANKFORD v. GELSTEN Judge Sobeloff in enjoining mass raids without probable cause pointed out:

Copy the text on p. 16 & 17 labelled Ⓐ.

Thus the interests protected against illegal searches in Lankford were not limited to the immediate victim, but also potential victims and the society that ultimately suffers when one group meets harassment. The court recognized that the victims don't stay quiet. ~~The distrust and contempt for authority may be submerged~~ The fear, distrust, and expectation of totalitarian treatment from government can infect large segments of the community. And the ultimate consequence is anarchy and riot.

The Almeda County "operation bedcheck" undoubtedly subjected hundreds of people to illegality, and indignity. If some of the victims deny entry as the welfare department contends, these welfare recipients are able to freely and voluntarily exercise their rights — then these people will have been surrounded at 6:30 in the morning, rudely awoken, subjected to annoying, inconsiderate, disrespectful government behavior without any shadow of cause or consent. It is direct government persecution. It is illegality by the ~~ex~~ representatives of the institutions that the victims are asked to trust and respect and give allegeaince. ~~Nothing could be more dangerous.~~ It is one fine way of provoking ~~riots or~~ hatred and riot. The government is the omnipresent teacher; ~~and~~ disrespect and illegality will be answered in kind.

These raids go far beyond the invasion of mere individual rights. ~~They threaten our free institutions, undermine the security of all citizens, and permit unprecedented government control.~~ In permitting unprecedented government control and surveillance ~~they~~ threaten our free institutions and undermine the security of all citizens. Further they help produce the desperation & antagonism that bring cities into riot. The illegality and dangers of these raids are so grave ~~a~~ that the raids cease to be invasions of mere individual rights. Thus the ~~ever~~ possibility of consent by the victims does not purge the raids of their unconstitutionality.

CONSENT CAN OPERATE[redacted] ONLY TO VALIDATE ACTS WHICH INVADE AN INDIVIDUAL INTEREST BUT CONSENT CAN [redacted] NOT VALIDATE THESE MASS [redacted] WHICH ATTTACK COMMUNITY [redacted] VALUES AND INTERESTS BY ① VIOLATING THE PRIVACY AND SECURITY OF ALL CITIZENS BY THR EXCESSIVE GOVERNMENT CONTROL AND SURVEILLANCE ② CREATING [redacted] IN ITS [redacted] IMMEDIATE

VIC THE ANTAG AND H THAT LE TO RIO

Private parties cannot license the commission of a crime. Thus a violation of state law is a crime, and it does not lie within the discretion of the victim as to whether t the violator shall be punished. Stabelton v Haskins 21 NE2d 884 177 Ohio St. 52. The consent of the victimK does not purge violations of law of their character as a public wrong. when the interest attacked is community, not merely private, and when the danger is general not individua then the illegal conduct can not be legitemated by the ~~immediate~~ victim's conse

(1) The basic policy of the Fourth Amendment is to secure to the citizen the right of privacy in his home. The landmark case of Boyd v US 116 US 616, 630 (1886) stated simply and forcefully:

> (The principle of the Fourth Amendment) apply to all invasions , on the part of the government and its employees, of the sancity of a XXXX man's home and the privacies of life. It is not the breaking of doors and the rummaginb od hia drawers that constitutes the essence of the offense;but it is the invasion of his indefeasible right of personal security, personal liberty, and ptivate property.

~~This was reiterated by Justice Harlan in Jones v US 357 US 493, 498 (1958): The decisions of this court have time and again underscored the essential purpose of the Fourth Amendment to shield the citizen from unwarranted intrusions into his property.~~

But courts have pointed out that the Fourth Amendment besides protecting individual interests also safeguards and maintains transcendant national interests. James Otis' denunciation of the general warrant, "the worst instrument of arbitrary power , the most destructive of English liberty , and the fundamental principles of law , that ever was found in an English lawbook, because they placed the liberty of every man in the the hands of ~~every~~ every petty officer" reflects concern not only with individual interests, but the destructive effect of arbitrary pwer on the rule of law and on the security which is essential for free institutions. Nearly idetical sentiments have been expressed throughout our constitutional history. Thus in Gouled v US 255 US 303,304 the Supreme Court noted,

> It would not be possible to add to the emphasis with which the framers of the constitution and this court have declared the importance to political liberty and the welfare of our country of the due observance fo the rights guaranteed under the Constitutuin by the two (Fourth and Fifth) Amendments. The effect of the decisions cited is: that such rights are declared to be indespensable to the full enjoyment of personal security,personal liberty, and private property; that they are to be regarded as of the very essence of constitutional liberty; and the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen.

In Johnson v US 333 US 10,14 the court stated,

> Crime, even in the privacy of one's own quarters, is, of course , of grave concern to society, and the allowa such crime to be reached on proper showing. The right of officers to thrust themselves into a home is also a grave condern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance.

And Justice Jackson dissenting in Brinegar v US 338 US 160, 180 notes the effect of police state techniques:

> Among deprivation of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror into every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. And one need only briefly to have dwelt and worked among a people possessed of many admireable qualities but deprived of their rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police.

then swallow the rule; police or any other authority could go anywhere, knock on any door as long as they uttered their litany of requests. This practice would be no "stealthy encroachment upon or gradual depreciation of the rights secured "by the Fourth Amendment; the approval of this practice would be a massive attact on the Fourth Amendment's rights of privacy and security. We urge that as "repeatedly decided," "the amendments should receive a liberal construction," and the "very narrow exceptions" kept narrow. Consent may be sufficient to legitimate an otherwise illegal search of one man's home, with the authorities bearing the burden of proof that "effectice consent" was obtained. But we urge the court to rule that the consent exception must be narrowly construed and cannot be used to justify these early morning mass raids.

[illegible], SMALL, ET AL. VS. STATE OF NEW YORK, [illegible]
([illegible] 22) [illegible] TRIBES [illegible])

IN THE

Supreme Court of the United States

October Term, 1965

No. ....

SARA E. PENN, HELENA L. LEVINE, BARBARA PLISKOW, EDWARD M. PITT, BENITA T. CANNON, CLAUDIO RAMOS, THOMAS McKENNA, MERYL CHATKIN, ISIDORE T. BLOOM, DAVID RIVERA, and SAUL GOTTLIEB,

Petitioners,

v.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

ROBERT KASANOF,
No. 52 Broadway,
New York, N. Y. 10004

HOWARD SQUADRON,
No. 32 East 57th Street,
New York, N. Y.

CARL RACHLIN,
No. 38 Park Row,
New York, N. Y.

Counsel for Petitioners.

Of Counsel:

STEPHEN M. NAGLER.

INDEX

PAGE

Citations to Opinions Below — 1

Jurisdiction — 2

Questions Presented — 2

Constitutional Provisions and Statutes Involved — 3

Statement — 7

Reasons for Granting the Writ — 13

Conclusion — 18

Appendix A—Opinions of the Appellate Term, First Department, Majority Opinion — 1a

Dissenting Opinion — 10a

Appendix B—Order Amending Remittitur — 31a

CITATIONS

Cases:

Cox v. *Louisiana*, 379 U. S. 536 (1965) — 18

Lombard v. *Louisiana*, 373 U. S. 267 (1963) — 17

Terminello v. *City of Chicago*, 337 U. S. 1 (1949) — 15

Constitutional Provisions and Statutes:

United States Constitution

First Amendment — 3

Fourteenth Amendment — 3

PAGE

New York Statutes

Penal Law

§514 .... 4, 16

§701 .... 5, 16

§722 (2) and (3) 5, 7

Civil Rights Law

§41 .... 5, 16

§43 .... 6, 16

Labor Law

§220-e (c) 7, 16

IN THE

Supreme Court of the United States

October Term, 1965

No. ....

SARA E. PENN, HELENA L. LEVINE, BARBARA PLISKOW,
EDWARD M. PITT, BENITA T. CANNON, CLAUDIO RAMOS,
THOMAS MCKENNA, MERYL CHATKIN, ISIDORE T. BLOOM,
DAVID RIVERA, and SAUL GOTTLIEB,

Petitioners,

v.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the State of New York entered in the above entitled case on May 20, 1965.

Citations to Opinions Below

The Court of Appeals affirmed the conviction of the defendants without opinion and its action is reported at 16 N. Y. 2d 581. The Appellate Term of the Supreme Court, from which the appeal to the Court of Appeals was taken, affirmed the convictions of the defendants in February, 1964, and that opinion is printed as Appendix A hereto, and is not yet officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on May 20, 1965. On September 23, 1965, the Court of Appeals denied a motion for reargument but granted a motion to amend the remittitur so as to reflect that it had necessarily passed on the contention of the defendants that their constitutional rights were violated. The order amending the remittitur is printed as Appendix B hereto. The action of the Court of Appeals in denying the motion to reargue and granting the motion to amend the remittitur is reported at 16 N. Y. 2d 872, 883, 884 (Sept. 23, 1965). The opinion of the Appellate Term printed here as Appendix A plainly reflects that the petitioners contended in that court that their constitutional rights had been violated and that those contentions had been adequately raised and preserved in the trial court.

On December 20, 1965, Mr. Justice Harlan granted an extension of time in which to file a petition for a writ of certiorari up to and including February 19, 1966.

The jurisdiction of this court is invoked under Title 28, United States Code, §1257(3).

Questions Presented

1. Whether persons who congregate to protest against the commission of a crime by labor unions practicing racial discrimination in violation of state statutes may constitutionally be convicted of disorderly conduct, if their congregating is intended to and has the effect of blocking the movement of the persons aiding and abetting the commis-

sion of a crime and such demonstration incidentally attracts the attention of passers-by.

2. Whether in determining if the conduct of demonstrators who obstructed the movement of certain persons was a criminal breach of the peace or an exercise of their rights of speech and assembly, the Trial Court could constitutionally refuse to receive evidence from law enforcement officials and other experts that the persons whose movements were obstructed were involved in the commission of crimes by virtue of practicing racial discrimination.

Constitutional Provisions and Statutes

United States Constitution

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

• • •

New York Statutes

Penal Law §514

Protecting civil and public rights

A person who: 1. Excludes a citizen of this state, by reason of race, color, creed, national origin or previous condition of servitude, from any public employment or employment in any capacity in industries engaged in defense contracts or from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement, or by teachers and officers of common schools and public institutions of learning; or,

2. Excludes a citizen of this state by reason of race, color, national origin or previous condition of servitude from the equal enjoyment of any accommodation, facility or privilege furnished by a cemetery association or associations;

3. Denies or aids or incites another to deny to any other person because of race, creed, color or national origin public employment or employment in any capacity in industries engaged in war contracts or the full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance on land or water, theatre or other place of public resort or amusement:

Is guilty of a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars. As amended L. 1918, c. 380; L. 1941, c. 478, §2; L. 1942, c. 438; L. 1942, c. 676, §2; L. 1943, c. 105, §5, eff. March 12, 1943.

Penal Law §701

Penalty for violation—Any person who shall violate any of the provisions of the foregoing section, or who shall aid or incite the violation of any of said provisions shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby in any court of competent jurisdiction in the county in which the defendant shall reside; and shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. Added L. 1941, c. 910, eff. April 30, 1941.

Penal Law §722

Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:

(2.) Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

(3.) Congregates with others on a public street and refuses to move on when ordered by the police;

Civil Rights Law
§41

Penalty for violation—Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such sections shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. As amended L. 1913, c. 265; L. 1918 c. 196; L. 1932, c. 234, §2; L. 1940, c. 9, §2; L. 1941, c. 893, §2; L. 1942, c. 478, eff. April 17, 1942 .

Civil Rights Law

§43

Discrimination by labor organizations prohibited—As used in this section, the term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of its race, creed, color or national origin, or by regulations, practice or otherwise, deny to any of its members, by reason of race, creed, color or national origin, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer. Added L. 1940, c. 9, §1, amended L. 1945, c. 292, §5, eff. March 27, 1945.

Labor Law

§220-e (c)

That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

Statement

Each of the defendants was convicted after joint trial of the offense of Disorderly Conduct, Penal Law §722 (2) and (3) in the Criminal Court of the City of New York and sentenced to pay a fine of $25 or serve five days in jail.

On the morning of August 1, 1963, the petitioners, associated with CORE, were picketing and demonstrating at the Rutgers Public Housing construction site on the lower East Side of New York. After picketing for several days, at this site and elsewhere, to call attention to discrimination practiced in the building industry in violation of New York law, twice during the morning of August 1, at 10:00 and again at 11:00, various of the defendants sat down in the path on on-coming trucks and refused to leave when exhorted to do so by police officers, until they were placed under arrest. The People's evidence was made out by two truck drivers, Salvatore Kane (8-37)* and Paul Orlando (37-50). Kane identified petitioners Pitt, Penn, Pliskow and Levine as having sat down in front of his truck (10-13) and obstructed the movement of his truck for about fifteen minutes (15). They were neither loud nor boisterous but were singing (22-23). Later in the morning Kane made a second delivery to the construction site; he identified the petitioner Chatkin as having sat between the wheels of his truck at that time (26-28). Orlando identified petitioners Cannon and Rivera as having sat down in the path of his truck at the time he attempted to deliver concrete (38-39 42, 46). Two police sergeants, Thomas Coyne (50-85) and Harold McCauley (85-136), identified petitioners McKenna, Gottlieb, Rivera (88-90), Pitt, Penn, Pliskow and Levine (53), Cannon and Ramos (96), Bloom and Chatkin (97), as taking part in the obstruction of the movement of the trucks. The defendants refused to comply with the directions of the police to desist, but when informed they were under arrest walked quietly to the patrol wagon, e.g., 96, 98.

---

* Numbers in parentheses unless otherwise indicated refer to pages of the stenographic minutes of trial in the Criminal Court of the City of New York which have been filed as part of the record on this petition.

During these events a large detail of police, a number of newspaper reporters and photographers, and onlookers who fluctuated in number from 100 to 225 were in the neighborhood (98-99; 56, 64, 65, 71, 74). Vehicular traffic, some of which slowed to look and some of which was slowed by the blocked trucks, was kept moving by police officers (57; 99-100).

Mrs. Helena Levine, an instructor at New York University and a doctoral candidate in history, the wife of a physician (172-173), testified on behalf of the defendants, and it was stipulated that the other defendants would testify that they sat down at the places testified to by the People's witnesses for the purposes and with the intent stated by Mrs. Levine (192-196). She testified:

> "I intended to bring it to the attention of the authorities there was discrimination being practiced in the building trades unions, which was against the law, in violation of the law." (175)

Assistant New York State Attorney General Shirley Seigel, in charge of the Civil Rights Bureau (168-169), Madison Jones, Executive Director of the New York City Commission on Human Rights (142), and Professor Donald Shaughnessy of Columbia University (164-165), who for eight months conducted an investigation of the building trades unions in the city of New York at the behest of the New York State Advisory Commission to the United States Commission on Civil Rights, were all called as witnesses in an effort to show that the building trades unions working at the housing site involved were practicing discrimination in violation of law. The Court refused to hear such evidence. Typically:

> "Q. Mrs. Seigel, has the attorney general's office conducted any investigation or inquiry into the subject of discrimination in the building trades unions?
>
> Mr. McGinley: Objection.
> The Court: Sustained." (171-172)

Ultimately the Court ruled that it was striking testimony "with reference to any findings they may have made as the result of studies" (209).

Harold Klorfine of the New York City Housing Authority testified as to the boundaries of this housing project and named unions among those represented in the construction—bricklayers, masons, lathers, carpenters, steamfitters, electricians, plumbers, sheet metal mechanics (157-164).

The petitioners were each convicted and sentenced to a twenty-five dollar fine or five days in jail, which has been paid or served.

The Appellate Term of the Supreme Court affirmed the conviction by a divided court. The majority viewed the defendants' conduct thusly:

> "The Court realizes that the defendants were motivated by a desire to dramatize the impairment of civil rights in the area covered by the activities of building trades unions in the construction industry, but it simply cannot justify their behavior. To condone their actions would constitute each one a judge of what law he will obey, depending upon his own personal convictions of right and wrong. Per-

> mitting this would constitute an abandonment by society of the rule of law, give support to lawlessness and invite anarchy." App. A, *infra*, 9a.

Mr. Justice Hofstadter dissented. He found procedural irregularities in the joining of defendants. We abandon that ground and do not urge it upon this Court. He found, however, two other fatal flaws in the conviction. One related to the Trial Court's restrictions of the defendants' proofs:

> "The trial court committed substantial error in rejecting evidence concerning the existence and effect of racial discrimination in employment. Defendants' acts must be judged in the context of the demonstrations then taking place—and the right to demonstrate depended on the purpose of the demonstration (Giboney v. Empire Storage Co., 336 U. S. 490). Our Appellate Division said in Gaynor v. Rockefeller (21 A D 92): 'The racial policies of exclusion by some defendant unions * * * are of so long a duration and so widely known that the courts might, if they so elected, take judicial notice of the fact. * * * their policies bar respondents * * * from employment in particular categories. Establishing the contention as a factual truth, in a proper proceeding, would permit legal redress' (p. 100). If the fact of discrimination can serve as a predicate for redress in a civil proceeding, certainly it is relevant on such matters of wilfulness, *mens rea*, etc., in a criminal case. What a civil forum can take judicial notice of, surely is relevant in the context of the issue presented to a criminal court. The trial court's restriction of the defendants' proof was grievous, reversible error." App. A, *infra*, 16a.

The second flaw in the conviction was that judged in context the defendants' conduct was constitutionally protected.

> "And it is equally clear that the protest need not be ineffectual to be immune from penalty. It is inherent in the constitutional guaranty that protest may be sufficiently potent to bring the grievance to the attention of the public and government. (Thornhill v. Alabama, *supra,* at p. 96) The fact that the action was taken according to a preconceived plan does not make it unlawful if protected by the Constitution (Taylor v. Louisiana, 370 U. S. 154, 155-156); nor because of possible disorder by others (Henry v. City of Rock Hill, 376 U. S. 776).
>
> • • •
>
> Only 'when clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears', the State may intervene (Cantwell v. Connecticut, supra, p. 308); absent these elements, the demonstration may not be arrested (Edwards v. South Carolina, 372 U. S. 229, distinguishing Feiner v. New York, 340 U. S. 315; Niemotko v.Maryland, 340 U. S. 268; Kunz v. New York, 340 U. S. 290; Matter of Rockwell v. Morris, 12 A D 2d 272, aff'd 10 N. Y. 2d 721, cert. den. 368 U. S. 913)."
>
> • • •
>
> "In dealing with highly volatile forces 'not merely intellectual but also passionate,' the judiciary may not always find it possible to achieve a perfect solution in the interplay between dry legal considerations and dynamic social realities. It cannot always make infallibly correct judgments; it must content itself with 'splendidly imperfect' ones in the anguished choice among competing goods, in the effort to potentiate and perpetuate 'principles of humanity

> and civil liberty' (Bram v. United States, 168 U. S. 532)." App. A, *infra*, 19a, 20a, 24a.

The Court of Appeals at 16 N. Y. 2d 581, subsequently affirmed without opinion.

Reasons for Granting the Writ

This is a sit-in case upside down. Unlike the cases arising from the South, petitioners here were not seeking to test or overturn an unconstitutional law or ordinance, they were not endeavoring to topple a prevailing social custom which enforced racial discrimination, abetted by the invidious application of apparently neutral criminal laws. Rather their purpose here was to invoke and activate the officials of the state of New York to do their duty as they had not under the law as it existed, to press the community, the police, the District Attorney, the City of New York, to conform their deeds to their words. As such, this case is possibly the first, but certainly not the last, to be presented to this court in a very different factual matrix from the ones which have concerned it in the past few terms. The effort in the North to make equal the access to life, liberty and the pursuit of happiness raises, and will continue to raise, pressing questions for this court as to the concrete meaning of the rights of free speech and assembly. The position of the District Attorney, acquiesced in by the Trial Court and approved by the reviewing courts, that it was irrelevant and hence inadmissible for the defendants to show that the trade unions employed at the site of the demonstrations were engaged in racial discrimination in violation of specific statutes, is little short of scandalous. If the petitioners had blocked traffic to a bordello or a gambling den it is inconceivable that the District Attorney would urge that that sort of violation was recognized to be open and notorious; yet in his brief in the Court of Appeals the District Attorney states:

> "* * * Indeed, discrimination in building trades unions 'are of so long duration and so widely known that the courts might, if they so elected, take judicial notice of the fact' (*Gaynor* v. *Rockefeller*, 21 App. Div. 2d 92, 100 [1st Dept. 1964]). Thus establishing that the protest was not speciously and maliciously grounded, proof of its truth was irrelevant to a defense of 'fair comment'." (Respondent's Brief in the Court of Appeals, pp. 24-25)

Similarly, the majority opinion in the Appellate Term (App. A, *infra*, 16a) indicates that the practice of racial discrimination by certain trade unions is so notorious as to be the subject of judicial notice. The inference that the District Attorney draws is that the criminal activities of the building trades unions in violating the laws of the state of New York are so well known that the demonstrations were not "maliciously grounded" but presumably sincere. The implication of the majority opinion in the Appellate Term is that the criminal activity of the building trades unions was so well known and so clearly violative of statutory law that for the defendants to interfere with those crimes in any way was a step down the road to anarchy. The true failure in this case is that of the police and the district attorney in making no effort to uphold laws supporting constitutional equal protection and arresting those who call this sad neglect of duty to the public attention. We suggest that the failure of public officials in this case, not the conduct of petitioners, leads to anarchy and disrespect for law. One of the purposes of the picketing was to exhort support of existing laws being ignored.

The conduct of the demonstrators was carefully designed in purpose and execution to focus on the illegal activities of the building trades unions. Insofar as the police sought to exhort them not to interfere with the activities of the building trades trucks, they ignored the police, but when the police invoked their authority to arrest the demonstrators they all peacefully submitted to arrest. The crowd was orderly, vehicular traffic was kept moving and there was, in fact, no impending disorder. The majority in the Appellate Term said that the acts of the demonstrators were likely to produce consternation and alarm and might have been "retaliated" by the truck drivers or others but for the presence of an adequate number of police (App. A, *infra*, 2a). Long ago this court in *Terminello* v. *City of Chicago*, 337 U. S. 1 (1949), rejected the notion that potential retaliation by those who find speech offensive may be used to set at nought the speaker's right to express himself. Whatever quarrel the contractor or the building trades unions might have with the defendant, the *public* peace was not disrupted, and any threat to the public here present, only a speculative potential, came from the possible improper response of bystanders.

What is most clearly displayed by this case, as much in its progress through the courts as in its birth at the public housing project, is an unreasonable and racially discriminatory attitude towards two sets of laws. The disorderly conduct section of the New York State Penal Law is applied with a Javert-like rigidity to a situation in which there was a trifling slowup of vehicular traffic, easily managed by police (57, 69), and a gathering of a crowd of spectators (70-71; 98-100). This kind of disruption in every other kind of circumstance is approved by municipal authorities;

it occurs dozens of times a day when cranes or other marvelous engines of construction move through the city streets to the sites of new buildings, momentarily blocking traffic and attracting by-standers. The result is something commonly called progress.

The second set of laws, declaring and protecting the rights of the citizens, §§514 and 701 of the Penal Law, Civil Rights Law §§41 and 43, and Labor Law §220-e (c), are treated not as legislative enactments but as source material for after-dinner speeches. The police, the District Attorney and the courts, all simply saw fit to ignore those laws and to treat violations of them as irrelevant. The indifference of the authorities to the violations of the laws designed to protect the civil rights of all the citizens is, itself, a measure of the appropriateness of the forum in which the demonstrators chose to communicate their ideas, and the reasonableness of the method they took. These facts exhibit not only the indifference of the police and the District Attorney to violations of law at the site of the picketing, but since the project was a public one, we see also the failure of the great city to carry out its duty to protect all citizens equally.

As Mr. Justice Hofstadter pointed out so vividly, *supra*, at 12, the communication of ideas need not be ineffectual to be protected. It is inconceivable that a citizen who chased a bank robber through the streets should be prosecuted for disrupting the traffic, or that citizens who blocked a delivery truck containing heroin would be punished for attracting a crowd. The difference between those hypothetical cases and the case at bar is that the laws against bank robbery and narcotics trafficking are taken seriously and the laws against racial discrimination are not. The former are given medals for their bravery while petitioners were arrested for their pains.

In seeking review here we ask this court to give those who demonstrate in the North in *favor* of the application of local laws, which are in harmony with our Constitution, without creating violence or disturbance, the same recognition of their rights to do so that is given to those who in the South demonstrated *against* local laws in conflict with our Constitution.

We urge that this Court consider whether or not arrests, causing only minimal discomfort to a city, no more than commonly happens in New York from many causes, can be constitutionally sustained when such arrests stem from peaceful protests against unequal and discriminatory upholding of laws in support of constitutional equal protection. We suggest that this case is not unlike *Lombard* v. *Louisiana*, 373 U. S. 267 (1963); the public discomfort was hardly greater and the official support in favor of discriminatory treatment no less, accordingly the arrests are no less improper and unconstitutional.

We ask this court to hold that, as a minimum, trial courts in deciding breach of the peace cases must consider, and cannot reject, testimony showing that racial discrimination in violation of positive law is being practiced by those at whom the demonstration is pointed. The relevance of such testimony concerns not merely the "sincerity" of the demonstrators. Such testimony is crucial to the decision as to whether the state is reasonably exercising its power to maintain order, or arbitrarily suppressing efforts by its citizens to focus attention on the scandalous neglect of its officials to enforce the law. While the police may not be held to a detailed accounting of their enforcement of every criminal statute, when such police conduct shows a pattern of behaviour opposed to the enforcement of laws supporting equal protection of the law then such excluded testimony is relevant to the question of the constitutional propriety of the arrests.

At no point do we argue that *any* sort of conduct is permissible by petitioners merely because of improper police denial of equal protection of the laws. We do say, however, that the right of public to be free of minimal discomfort must give way to the right of protest in favor of the upholding of the laws against discrimination. Time and again this Court has supported the temporary discommoding of some people where the greater right of peaceful protest had to be maintained. *Cox* v. *Louisiana*, 379 U. S. 536 (1965).

We respectfully submit that these questions will persist until answered, and that it is in the interests of all of the citizens and of the orderly administration of justice that this court hear and decide them.

CONCLUSION

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

February 1966

Robert Kasanof,
Howard M. Squadron,
Carl Rachlin,
Counsel for Petitioners.

Of Counsel,
Stephen M. Nagler.

IN THE

Supreme Court of the United States

October Term, 1965

No. ....

SARA E. PENN, HELENA L. LEVINE, BARBARA PLISKOW, EDWARD M. PITT, BENITA T. CANNON, CLAUDIO RAMOS, THOMAS McKENNA, MERYL CHATKIN, ISIDORE T. BLOOM, DAVID RIVERA, and SAUL GOTTLIEB,

Petitioners,

v.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

ROBERT KASANOF,
No. 52 Broadway,
New York, N. Y. 10004

HOWARD SQUADRON,
No. 32 East 57th Street,
New York, N. Y.

CARL RACHLIN,
No. 38 Park Row,
New York, N. Y.

Counsel for Petitioners.

Of Counsel:

STEPHEN M. NAGLER.

INDEX

PAGE

Citations to Opinions Below ... 1

Jurisdiction ... 2

Questions Presented ... 2

Constitutional Provisions and Statutes Involved ... 3

Statement ... 7

Reasons for Granting the Writ ... 13

Conclusion ... 18

Appendix A—Opinions of the Appellate Term, First Department, Majority Opinion ... 1a

Dissenting Opinion ... 10a

Appendix B—Order Amending Remittitur ... 31a

CITATIONS

Cases:

Cox v. *Louisiana,* 379 U. S. 536 (1965) ... 18

Lombard v. *Louisiana,* 373 U. S. 267 (1963) ... 17

Terminello v. *City of Chicago,* 337 U. S. 1 (1949) ... 15

Constitutional Provisions and Statutes:

United States Constitution

First Amendment ... 3

Fourteenth Amendment ... 3

PAGE

New York Statutes

Penal Law

§514 .... 4, 16

§701 .... 5, 16

§722 (2) and (3) 5, 7

Civil Rights Law

§41 .... 5, 16

§43 .... 6, 16

Labor Law

§220-e (c) 7, 16

IN THE

Supreme Court of the United States

October Term, 1965

No. ....

SARA E. PENN, HELENA L. LEVINE, BARBARA PLISKOW, EDWARD M. PITT, BENITA T. CANNON, CLAUDIO RAMOS, THOMAS MCKENNA, MERYL CHATKIN, ISIDORE T. BLOOM, DAVID RIVERA, and SAUL GOTTLIEB,

Petitioners,

v.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Court of Appeals of the State of New York entered in the above entitled case on May 20, 1965.

Citations to Opinions Below

The Court of Appeals affirmed the conviction of the defendants without opinion and its action is reported at 16 N. Y. 2d 581. The Appellate Term of the Supreme Court, from which the appeal to the Court of Appeals was taken, affirmed the convictions of the defendants in February, 1964, and that opinion is printed as Appendix A hereto, and is not yet officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on May 20, 1965. On September 23, 1965, the Court of Appeals denied a motion for reargument but granted a motion to amend the remittitur so as to reflect that it had necessarily passed on the contention of the defendants that their constitutional rights were violated. The order amending the remittitur is printed as Appendix B hereto. The action of the Court of Appeals in denying the motion to reargue and granting the motion to amend the remittitur is reported at 16 N. Y. 2d 872, 883, 884 (Sept. 23, 1965). The opinion of the Appellate Term printed here as Appendix A plainly reflects that the petitioners contended in that court that their constitutional rights had been violated and that those contentions had been adequately raised and preserved in the trial court.

On December 20, 1965, Mr. Justice Harlan granted an extension of time in which to file a petition for a writ of certiorari up to and including February 19, 1966.

The jurisdiction of this court is invoked under Title 28, United States Code, §1257(3).

Questions Presented

1. Whether persons who congregate to protest against the commission of a crime by labor unions practicing racial discrimination in violation of state statutes may constitutionally be convicted of disorderly conduct, if their congregating is intended to and has the effect of blocking the movement of the persons aiding and abetting the commis-

sion of a crime and such demonstration incidentally attracts the attention of passers-by.

2. Whether in determining if the conduct of demonstrators who obstructed the movement of certain persons was a criminal breach of the peace or an exercise of their rights of speech and assembly, the Trial Court could constitutionally refuse to receive evidence from law enforcement officials and other experts that the persons whose movements were obstructed were involved in the commission of crimes by virtue of practicing racial discrimination.

Constitutional Provisions and Statutes

United States Constitution

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

• • •

New York Statutes

Penal Law §514

Protecting civil and public rights

A person who: 1. Excludes a citizen of this state, by reason of race, color, creed, national origin or previous condition of servitude, from any public employment or employment in any capacity in industries engaged in defense contracts or from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers or common carriers, or by owners, managers or lessees of theatres or other places of amusement, or by teachers and officers of common schools and public institutions of learning; or,

2. Excludes a citizen of this state by reason of race, color, national origin or previous condition of servitude from the equal enjoyment of any accommodation, facility or privilege furnished by a cemetery association or associations;

3. Denies or aids or incites another to deny to any other person because of race, creed, color or national origin public employment or employment in any capacity in industries engaged in war contracts or the full enjoyment of any of the accommodations, advantages, facilities and privileges of any hotel, inn, tavern, restaurant, public conveyance on land or water, theatre or other place of public resort or amusement:

Is guilty of a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars. As amended L. 1918, c. 380; L. 1941, c. 478, §2; L. 1942, c. 438; L. 1942, c. 676, §2; L. 1943, c. 105, §5, eff. March 12, 1943.

Penal Law §701

Penalty for violation—Any person who shall violate any of the provisions of the foregoing section, or who shall aid or incite the violation of any of said provisions shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby in any court of competent jurisdiction in the county in which the defendant shall reside; and shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. Added L. 1941, c. 910, eff. April 30, 1941.

Penal Law §722

Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:

(2.) Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others;

(3.) Congregates with others on a public street and refuses to move on when ordered by the police;

Civil Rights Law

§41

Penalty for violation—Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such sections shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. As amended L. 1913, c. 265; L. 1918 c. 196; L. 1932, c. 234, §2; L. 1940, c. 9, §2; L. 1941, c. 893, §2; L. 1942, c. 478, eff. April 17, 1942 .

Civil Rights Law

§43

Discrimination by labor organizations prohibited—As used in this section, the term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of its race, creed, color or national origin, or by regulations, practice or otherwise, deny to any of its members, by reason of race, creed, color or national origin, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer. Added L. 1940, c. 9, §1, amended L. 1945, c. 292, §5, eff. March 27, 1945.

Labor Law

§220-e (c)

That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

Statement

Each of the defendants was convicted after joint trial of the offense of Disorderly Conduct, Penal Law §722 (2) and (3) in the Criminal Court of the City of New York and sentenced to pay a fine of $25 or serve five days in jail.

On the morning of August 1, 1963, the petitioners, associated with CORE, were picketing and demonstrating at the Rutgers Public Housing construction site on the lower East Side of New York. After picketing for several days, at this site and elsewhere, to call attention to discrimination practiced in the building industry in violation of New York law, twice during the morning of August 1, at 10:00 and again at 11:00, various of the defendants sat down in the path on on-coming trucks and refused to leave when exhorted to do so by police officers, until they were placed under arrest. The People's evidence was made out by two truck drivers, Salvatore Kane (8-37)* and Paul Orlando (37-50). Kane identified petitioners Pitt, Penn, Pliskow and Levine as having sat down in front of his truck (10-13) and obstructed the movement of his truck for about fifteen minutes (15). They were neither loud nor boisterous but were singing (22-23). Later in the morning Kane made a second delivery to the construction site; he identified the petitioner Chatkin as having sat between the wheels of his truck at that time (26-28). Orlando identified petitioners Cannon and Rivera as having sat down in the path of his truck at the time he attempted to deliver concrete (38-39; 42, 46). Two police sergeants, Thomas Coyne (50-85) and Harold McCauley (85-136), identified petitioners McKenna, Gottlieb, Rivera (88-90), Pitt, Penn, Pliskow and Levine (53), Cannon and Ramos (96), Bloom and Chatkin (97), as taking part in the obstruction of the movement of the trucks. The defendants refused to comply with the directions of the police to desist, but when informed they were under arrest walked quietly to the patrol wagon, e.g., 96, 98.

---

* Numbers in parentheses unless otherwise indicated refer to pages of the stenographic minutes of trial in the Criminal Court of the City of New York which have been filed as part of the record on this petition.

During these events a large detail of police, a number of newspaper reporters and photographers, and onlookers who fluctuated in number from 100 to 225 were in the neighborhood (98-99; 56, 64, 65, 71, 74). Vehicular traffic, some of which slowed to look and some of which was slowed by the blocked trucks, was kept moving by police officers (57; 99-100).

Mrs. Helena Levine, an instructor at New York University and a doctoral candidate in history, the wife of a physician (172-173), testified on behalf of the defendants, and it was stipulated that the other defendants would testify that they sat down at the places testified to by the People's witnesses for the purposes and with the intent stated by Mrs. Levine (192-196). She testified:

> "I intended to bring it to the attention of the authorities there was discrimination being practiced in the building trades unions, which was against the law, in violation of the law." (175)

Assistant New York State Attorney General Shirley Seigel, in charge of the Civil Rights Bureau (168-169), Madison Jones, Executive Director of the New York City Commission on Human Rights (142), and Professor Donald Shaughnessy of Columbia University (164-165), who for eight months conducted an investigation of the building trades unions in the city of New York at the behest of the New York State Advisory Commission to the United States Commission on Civil Rights, were all called as witnesses in an effort to show that the building trades unions working at the housing site involved were practicing discrimination in violation of law. The Court refused to hear such evidence. Typically:

> "Q. Mrs. Seigel, has the attorney general's office conducted any investigation or inquiry into the subject of discrimination in the building trades unions?
>
> Mr. McGinley: Objection.
> The Court: Sustained." (171-172)

Ultimately the Court ruled that it was striking testimony "with reference to any findings they may have made as the result of studies" (209).

Harold Klorfine of the New York City Housing Authority testified as to the boundaries of this housing project and named unions among those represented in the construction—bricklayers, masons, lathers, carpenters, steamfitters, electricians, plumbers, sheet metal mechanics (157-164).

The petitioners were each convicted and sentenced to a twenty-five dollar fine or five days in jail, which has been paid or served.

The Appellate Term of the Supreme Court affirmed the conviction by a divided court. The majority viewed the defendants' conduct thusly:

> "The Court realizes that the defendants were motivated by a desire to dramatize the impairment of civil rights in the area covered by the activities of building trades unions in the construction industry, but it simply cannot justify their behavior. To condone their actions would constitute each one a judge of what law he will obey, depending upon his own personal convictions of right and wrong. Per-

> mitting this would constitute an abandonment by society of the rule of law, give support to lawlessness and invite anarchy." App. A, *infra*, 9a.

Mr. Justice Hofstadter dissented. He found procedural irregularities in the joining of defendants. We abandon that ground and do not urge it upon this Court. He found, however, two other fatal flaws in the conviction. One related to the Trial Court's restrictions of the defendants' proofs:

> "The trial court committed substantial error in rejecting evidence concerning the existence and effect of racial discrimination in employment. Defendants' acts must be judged in the context of the demonstrations then taking place—and the right to demonstrate depended on the purpose of the demonstration (Giboney v. Empire Storage Co., 336 U. S. 490). Our Appellate Division said in Gaynor v. Rockefeller (21 A D 92): 'The racial policies of exclusion by some defendant unions * * * are of so long a duration and so widely known that the courts might, if they so elected, take judicial notice of the fact. * * * their policies bar respondents * * * from employment in particular categories. Establishing the contention as a factual truth, in a proper proceeding, would permit legal redress' (p. 100). If the fact of discrimination can serve as a predicate for redress in a civil proceeding, certainly it is relevant on such matters of wilfulness, *mens rea*, etc., in a criminal case. What a civil forum can take judicial notice of, surely is relevant in the context of the issue presented to a criminal court. The trial court's restriction of the defendants' proof was grievous, reversible error." App. A, *infra*, 16a.

The second flaw in the conviction was that judged in context the defendants' conduct was constitutionally protected.

> "And it is equally clear that the protest need not be ineffectual to be immune from penalty. It is inherent in the constitutional guaranty that protest may be sufficiently potent to bring the grievance to the attention of the public and government. (Thornhill v. Alabama, *supra,* at p. 96) The fact that the action was taken according to a preconceived plan does not make it unlawful if protected by the Constitution (Taylor v. Louisiana, 370 U. S. 154, 155-156); nor because of possible disorder by others (Henry v. City of Rock Hill, 376 U. S. 776).
>
> * * *
>
> Only 'when clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears', the State may intervene (Cantwell v. Connecticut, supra, p. 308); absent these elements, the demonstration may not be arrested (Edwards v. South Carolina, 372 U. S. 229, distinguishing Feiner v. New York, 340 U. S. 315; Niemotko v.Maryland, 340 U. S. 268; Kunz v. New York, 340 U. S. 290; Matter of Rockwell v. Morris, 12 A D 2d 272, aff'd 10 N. Y. 2d 721, cert. den. 368 U. S. 913)."
>
> * * *
>
> "In dealing with highly volatile forces 'not merely intellectual but also passionate,' the judiciary may not always find it possible to achieve a perfect solution in the interplay between dry legal considerations and dynamic social realities. It cannot always make infallibly correct judgments; it must content itself with 'splendidly imperfect' ones in the anguished choice among competing goods, in the effort to potentiate and perpetuate 'principles of humanity

and civil liberty' (Bram v. United States, 168 U. S. 532)." App. A, *infra*, 19a, 20a, 24a.

The Court of Appeals at 16 N. Y. 2d 581, subsequently affirmed without opinion.

Reasons for Granting the Writ

This is a sit-in case upside down. Unlike the cases arising from the South, petitioners here were not seeking to test or overturn an unconstitutional law or ordinance, they were not endeavoring to topple a prevailing social custom which enforced racial discrimination, abetted by the invidious application of apparently neutral criminal laws. Rather their purpose here was to invoke and activate the officials of the state of New York to do their duty as they had not under the law as it existed, to press the community, the police, the District Attorney, the City of New York, to conform their deeds to their words. As such, this case is possibly the first, but certainly not the last, to be presented to this court in a very different factual matrix from the ones which have concerned it in the past few terms. The effort in the North to make equal the access to life, liberty and the pursuit of happiness raises, and will continue to raise, pressing questions for this court as to the concrete meaning of the rights of free speech and assembly. The position of the District Attorney, acquiesced in by the Trial Court and approved by the reviewing courts, that it was irrelevant and hence inadmissible for the defendants to show that the trade unions employed at the site of the demonstrations were engaged in racial discrimination in violation of specific statutes, is little short of scandalous. If the petitioners had blocked traffic to a bordello or a gambling den it is inconceivable that the District Attorney would urge that that sort of violation was recognized to be open and notorious; yet in his brief in the Court of Appeals the District Attorney states:

> "* * * Indeed, discrimination in building trades unions 'are of so long duration and so widely known that the courts might, if they so elected, take judicial notice of the fact' (*Gaynor* v. *Rockefeller*, 21 App. Div. 2d 92, 100 [1st Dept. 1964]). Thus establishing that the protest was not speciously and maliciously grounded, proof of its truth was irrelevant to a defense of 'fair comment'." (Respondent's Brief in the Court of Appeals, pp. 24-25)

Similarly, the majority opinion in the Appellate Term (App. A, *infra*, 16a) indicates that the practice of racial discrimination by certain trade unions is so notorious as to be the subject of judicial notice. The inference that the District Attorney draws is that the criminal activities of the building trades unions in violating the laws of the state of New York are so well known that the demonstrations were not "maliciously grounded" but presumably sincere. The implication of the majority opinion in the Appellate Term is that the criminal activity of the building trades unions was so well known and so clearly violative of statutory law that for the defendants to interfere with those crimes in any way was a step down the road to anarchy. The true failure in this case is that of the police and the district attorney in making no effort to uphold laws supporting constitutional equal protection and arresting those who call this sad neglect of duty to the public attention. We suggest that the failure of public officials in this case, not the conduct of petitioners, leads to anarchy and disrespect for law. One of the purposes of the picketing was to exhort support of existing laws being ignored.

The conduct of the demonstrators was carefully designed in purpose and execution to focus on the illegal activities of the building trades unions. Insofar as the police sought to exhort them not to interfere with the activities of the building trades trucks, they ignored the police, but when the police invoked their authority to arrest the demonstrators they all peacefully submitted to arrest. The crowd was orderly, vehicular traffic was kept moving and there was, in fact, no impending disorder. The majority in the Appellate Term said that the acts of the demonstrators were likely to produce consternation and alarm and might have been "retaliated" by the truck drivers or others but for the presence of an adequate number of police (App. A, *infra*, 2a). Long ago this court in *Terminello* v. *City of Chicago*, 337 U. S. 1 (1949), rejected the notion that potential retaliation by those who find speech offensive may be used to set at nought the speaker's right to express himself. Whatever quarrel the contractor or the building trades unions might have with the defendant, the *public* peace was not disrupted, and any threat to the public here present, only a speculative potential, came from the possible improper response of bystanders.

What is most clearly displayed by this case, as much in its progress through the courts as in its birth at the public housing project, is an unreasonable and racially discriminatory attitude towards two sets of laws. The disorderly conduct section of the New York State Penal Law is applied with a Javert-like rigidity to a situation in which there was a trifling slowup of vehicular traffic, easily managed by police (57, 69), and a gathering of a crowd of spectators (70-71; 98-100). This kind of disruption in every other kind of circumstance is approved by municipal authorities;

it occurs dozens of times a day when cranes or other marvelous engines of construction move through the city streets to the sites of new buildings, momentarily blocking traffic and attracting by-standers. The result is something commonly called progress.

The second set of laws, declaring and protecting the rights of the citizens, §§514 and 701 of the Penal Law, Civil Rights Law §§41 and 43, and Labor Law §220-e (c), are treated not as legislative enactments but as source material for after-dinner speeches. The police, the District Attorney and the courts, all simply saw fit to ignore those laws and to treat violations of them as irrelevant. The indifference of the authorities to the violations of the laws designed to protect the civil rights of all the citizens is, itself, a measure of the appropriateness of the forum in which the demonstrators chose to communicate their ideas, and the reasonableness of the method they took. These facts exhibit not only the indifference of the police and the District Attorney to violations of law at the site of the picketing, but since the project was a public one, we see also the failure of the great city to carry out its duty to protect all citizens equally.

As Mr. Justice Hofstadter pointed out so vividly, *supra*, at 12, the communication of ideas need not be ineffectual to be protected. It is inconceivable that a citizen who chased a bank robber through the streets should be prosecuted for disrupting the traffic, or that citizens who blocked a delivery truck containing heroin would be punished for attracting a crowd. The difference between those hypothetical cases and the case at bar is that the laws against bank robbery and narcotics trafficking are taken seriously and the laws against racial discrimination are not. The former are given medals for their bravery while petitioners were arrested for their pains.

In seeking review here we ask this court to give those who demonstrate in the North in *favor* of the application of local laws, which are in harmony with our Constitution, without creating violence or disturbance, the same recognition of their rights to do so that is given to those who in the South demonstrated *against* local laws in conflict with our Constitution.

We urge that this Court consider whether or not arrests, causing only minimal discomfort to a city, no more than commonly happens in New York from many causes, can be constitutionally sustained when such arrests stem from peaceful protests against unequal and discriminatory upholding of laws in support of constitutional equal protection. We suggest that this case is not unlike *Lombard* v. *Louisiana,* 373 U. S. 267 (1963); the public discomfort was hardly greater and the official support in favor of discriminatory treatment no less, accordingly the arrests are no less improper and unconstitutional.

We ask this court to hold that, as a minimum, trial courts in deciding breach of the peace cases must consider, and cannot reject, testimony showing that racial discrimination in violation of positive law is being practiced by those at whom the demonstration is pointed. The relevance of such testimony concerns not merely the "sincerity" of the demonstrators. Such testimony is crucial to the decision as to whether the state is reasonably exercising its power to maintain order, or arbitrarily suppressing efforts by its citizens to focus attention on the scandalous neglect of its officials to enforce the law. While the police may not be held to a detailed accounting of their enforcement of every criminal statute, when such police conduct shows a pattern of behaviour opposed to the enforcement of laws supporting equal protection of the law then such excluded testimony is relevant to the question of the constitutional propriety of the arrests.

At no point do we argue that *any* sort of conduct is permissible by petitioners merely because of improper police denial of equal protection of the laws. We do say, however, that the right of public to be free of minimal discomfort must give way to the right of protest in favor of the upholding of the laws against discrimination. Time and again this Court has supported the temporary discommoding of some people where the greater right of peaceful protest had to be maintained. *Cox* v. *Louisiana,* 379 U. S. 536 (1965).

We respectfully submit that these questions will persist until answered, and that it is in the interests of all of the citizens and of the orderly administration of justice that this court hear and decide them.

CONCLUSION

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

February 1966

Robert Kasanof,
Howard M. Squadron,
Carl Rachlin,
Counsel for Petitioners.

Of Counsel,
Stephen M. Nagler.

APPENDIX A

The Opinions of the Appellate Term, First Department

Majority Opinion by Capozzoli, J.

The instant appeal arises out of incidents of alleged disorder connected with a racial protest by these defendants against illegal discrimination in the building trades unions. These incidents occurred on Rutgers Street and on an access road leading to a wire fence containing the entrance to a building site where public housing was in the course of construction.

On the basis of the evidence adduced at the trial, the Court below found that these defendants darted into the path of trucks which were delivering construction material; some of them sat in front of and under the wheels of the trucks and others sat in front of the gate leading to the housing site itself. These actions interfered with the movements of the trucks so that they came to a complete stop and they were prevented from proceeding to their destination. The evidence also established that the defendants refused to obey the instructions of the police to move out of the way so as to allow the trucks to proceed. On the basis of the total evidence adduced the Court found all the defendants guilty of a violation of Sec. 722, Subds. 2 and 3 of the Penal Law of the State of New York (disorderly conduct).

It is the contention of the defendants on this appeal that the evidence in the court below was insufficient to support the convictions; that they are protected by the First and 14th Amendments to the Constitution of the United States and that Sec. 722 of the Penal Law has no application to their actions.

There was no real dispute below as to the evidence. The defendants admitted that they deliberately placed themselves in sitting positions before the entrance gate to the building site and also on the street, directly in front of the trucks and the wheels thereof. There is no dispute that their "sit-down" conduct stopped and prevented the trucks from entering the site.

Such conduct was not normally to be anticipated. It constituted a disturbance of the public order by acts likely to produce violence and cause consternation and alarm. There is enough shown from which it can reasonably be seen that, had an adequate number of police not been present, the conduct of the defendants might have been retaliated by the truck drivers or others with serious consequences to the peace of the community.

The further conduct of the defendants in refusing to remove themselves from their obstructionist sitting positions, after repeated requests and entreaties by the police officers and after being repeatedly warned by the police that the conduct of the defendants violated the law and that they could be arrested therefor, were all calculated to, and did in fact, violate Sec. 722. There is no question but that the defendants, by their conduct and acts, annoyed, disturbed, interfered with and obstructed others (the truck drivers) by acts likely to produce violence and cause consternation and alarm, all of which tended to a breach of the peace. (Penal Law, Sec. 722, subd. 2.) They also violated subd. 3 of the statute by congregating on a public street and refusing to move on when ordered to do so by the police.

A review of the record below discloses ample evidence to justify the convictions of the defendants.

The defendants strongly contend that their actions were legal and not subject to prosecution, because they desired to dramatize the impairment of civil rights by labor unions in the building trades, and to call attention to acts of discrimination by them against negroes. They further argue that they were engaged in a peaceful protest against these acts of discrimination and were engaged in an effort to have the laws prohibiting discrimination enforced. That in doing so, they maintain, they are protected by the United States Constitution as a proper exercise of free speech, proper exercise of the rights of public assembly and to petition for redress of grievances under the First and 14th Amendments. In support of their position they cite the cases of Edwards v. South Carolina, 372 U. S. 229 (1963); Shuttlesworth v. Birmingham, 373 U. S. 262 (1963); Peterson v. Greenville, 373 U. S. 244 (1963); Johnson v. Virginia, 373 U. S. 61 (1963) and Lombard v. Louisiana, 373 U. S. 267 (1963).

An examination of those cases discloses that the reliance by the defendants upon them is entirely misplaced. The facts in the case at bar are so obviously different from the facts in all of the last cited cases as to render the sound holdings of those cases clearly inapplicable to the behavior of these defendants.

This Court is not faced with an orderly, quiet lunch-counter sit-in which violates an unconstitutional city ordinance requiring the separation of the races in restaurants (Peterson v. Greenville, supra); or which violates an "official command which has at least as much coercive effect as an ordinance" and which directs the continuance of segregated services in restaurants (Lombard v. Louisiana, supra, p. 273); nor is the Court dealing with a conviction for aiding and abetting persons to engage in an orderly sit-down demonstration (Shuttlesworth v. Birmingham, supra); neither is the Court dealing with a contempt conviction which rests upon a negro's refusal to comply with the segregated seating requirements observed in a courtroom (Johnson v. Virginia, supra); wherein petitioner was held in contempt for being "peaceably seated in the section reserved for whites" (p. 62). Nor do we have the situation which was presented in Edwards v. South Carolina, supra, where there was an assembly of negroes to peaceably express their grievances and where the court specifically found that "there was no violence or threat of violence" and further found "there was no obstruction of pedestrian or vehicular traffic * * * no vehicle was prevented from entering or leaving * * * the area of the demonstration" (pp. 231, 232).

As against these last cited cases let us consider the case of People v. Stover, 12 N. Y. 2d 462. In that case defendants placed a clothes-line filled with old clothes and rags in the front yard of their home, in violation of an ordinance of the City of Rye prohibiting the erection and maintenance of clothes-lines or other devices for hanging clothes in a front or side yard abutting a street. When prosecuted therefor the defendants urged, amongst other things, that the ordinance was unconstitutional and that it interfered with their right of free speech as guaranteed by the First Amendment. In passing upon this contention of the defendants the Court said:

> "* * * This form of nonverbal expression is, we shall assume, a form of speech within the meaning of the First Amendment. (Citing cases) However, it is perfectly clear that, since these rights are neither absolute nor unlimited (citing cases), they are subject to such reasonable regulation as is provided by the ordinance before us. Although the city may not interfere with nonviolent speech, it may proscribe conduct which incites to violence or works an injury on property, and the circumstance that such prohibition has an impact on speech or expression, otherwise permissible, does not necessarily invalidate the legislation."

In the case of Trans-Lux Distributing Corp., v. Board of Regents, etc., 14 N. Y. 2d 88, at p. 91, the Court said:

> "* * * while conduct may be speech, it still remains conduct and does not cease to present its unique problems of social control. It is now the law that even peaceful picketing may be forbidden where it violates State Labor laws that are not themselves designed as restrictions on freedom of speech (citing case). Conduct that is proscribed for valid public purposes is not immune merely because engaged in with a view to expression (Giboney v. Empire Storage Co., 336 U. S. 490.)"

The holding in the last two cited cases is directly contrary to the position taken by the defendants.

In the case of Gaynor, et al., v. Rockefeller, et al., 21 App. Div. 2d 92, the unanimous opinion of the Court indicated that racial policies of exclusion by some of the building industry unions "are of so long duration and so widely known that the courts might, if they so elected, take judicial notice of the fact * * * (p. 100). The Court then indicated that the law provides punishment for business or labor organizations which discriminate unlawfully, citing Penal Law, Secs. 514 and 701; Civil Rights Law, Secs. 41, 43; Labor Law, Sec. 220-e, Subd. c.

It is, therefore, apparent that these defendants had legal avenues open to them to bring about the objectives they seek.

While it is true that the Supreme Court of the United States has held that public grievances are within the constitutional protection of the First Amendment, it has also held that the manner of protest is subject to reasonable regulation and control in the interest of public safety and order. (Cox v. N. Hampshire, 312 U. S. 569; Giboney v. Empire Storage, 336 U. S. 490; Cantwell v. Conn., 310 U. S. 296). Also see: People v. Galamison, 43 Misc. 2d 72; People v. Martin, 43 Misc. 2d 355.

In Cox v. N. Hampshire, supra, at p. 574, The Court said:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illuustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right

> which in other circumstances would be entitled to protection. * * *".

In Giboney v. Empire Storage Co., supra, at p. 498, the Court said:

> "It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to * * * conduct in violation of a valid criminal statute. We reject the contention now. * * *".

In Cantwell v. Connecticut, supra, at page 308, the Court said:

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious. * * *".

In People v. Martin, supra, at p. 357, the Court said:

> "Thus, although the Supreme Court has decreed that the Fourteenth Amendment prohibits a State from making criminal the peaceful expression of 'unpopular views', this does not imply that persons wishing to exercise the right to express their views may comport themselves in a manner which will

> constitute disorderly conduct as defined in our penal statutes."

The defendants attempted to equate their actions with peaceful picketing. Of course, if they were engaged in peaceful picketing, the actions of the police in arresting them would have been illegal. But were they engaged in peaceful picketing? That term implies peaceful, non-provocative. Can it honestly be contended that the acts of the various defendants, in placing themselves under wheels of the trucks and otherwise interfering with the progress of the trucks, were peaceful? Is it seriously claimed that such behavior would not tend to possible violence on the part of those against whom these acts were directed and thereby breach the peace? These questions pose their own answers.

The defendants argue that, since their purpose was to bring to the attention of the public and the authorities acts of a discriminatory nature, they had a perfect right to perform the acts of which they stand convicted, despite the prohibition of laws, and no convictions may result therefrom. Certainly this Court is sympathetic with the objectives which these defendants sought to achieve and it recognizes the justness of their cause and their well-intentioned motives. However, this Court is limited as to the power it may exercise in the case at bar. It can only review the record and base its conclusion upon that record within the law as it is applicable thereto. It cannot engage in a dissertation of the philosophical and sociological questions which would be raised by a consideration of the objectives which these defendants sought to attain by engaging in acts which violated the law. It can only apply the existing law to the facts found below. If the evidence shows a violation of the law by these defendants, then the reason why they broke the law is immaterial and irrelevant.

The Court realizes that the defendants were motivated by a desire to dramatize the impairment of civil rights in the area covered by the activities of the building trades unions in the construction industry, but it simply cannot justify their behavior. To condone their actions would constitute each one a judge of what law he will obey and what law he will not obey, depending upon his own personal convictions of right and wrong. Permitting this would constitute an abandonment by society of the rule of law, give support to lawlessness and invite anarchy.

Civil rights can be as much endangered by illegal methods used in an attempt to gain them, as they are by those who would deny them altogether.

The dissenting opinion criticizes the joint trial of these defendants by the trial court and concludes that it resulted in a denial to the defendants of a fair trial. A number of cases are cited in support of this conclusion. An examination of those cases discloses that in some what was considered was not joinder of defendants, but joinder of counts and in the others the facts are entirely dissimilar from the facts in the case at bar. The fact is that every defendant stipulated with the People to hold a joint trial and the record clearly shows that every defendant was convicted on the basis of the particular evidence adduced against his own actions. It is interesting to note that this point is not raised on this appeal by any of the defendants.

For the reasons hereinabove expressed the convictions against all of the defendants are affirmed.

Dissenting Opinion by Hofstadter, J.

Hofstadter, J. (Dissenting):

I dissent and vote to reverse the judgments of convictions.

I know that my bretheren [sic] not only are tolerant of opposing views in themselves but cordially embrace the free expression of them. Indeed, such freedom of expressing all viewpoints, whether acquiescent of [or] dissident, is not only a duty but the reward of service in a multiple court.[1] In an ancient and highly developed system of law, it was a rule that a court that was uniformly unanimous was one to be shunned—it was dissolved and its membership reconstituted. In our country dissent is regarded as salutary for the development of sound judicial principles—yesterday's dissenter may be tomorrow's majority.

In a notable dissent in Malloy v. Hogan (U. S. —; 84 S. Ct. 1489) Mr. Justice Harlan declared: "Believing that the * * * court's decision carries extremely mischievous, if not dangerous consequences, * * * I must dissent. The importance of the issue presented and the serious incursion which the court makes on * * * basic constitutional principles justifies a full exposition of my reasons." I regard this expression as apposite here.

Eleven defendants tried together in an omnibus trial—though none was charged with acting in concert or congregating with any of the others—have been convicted of disorderly conduct (Penal Law, §722 [2, 3]).[2]

In a case involving demonstrations by Bronx housewives against the seller of bread at alleged exorbitant prices—in the depression year 1934—I took occasion to observe: "The right of an individual or group of individuals to protest in a peaceable manner against injustice or oppression, actual or merely fancied, is one to be cherished and not to be proscribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the State in that it serves as a safety valve in times of stress and strain." (Julie Baking Co. Inc. v. Graymond, 152 Misc. 846, 847). If this was a novel proposition when uttered, it soon ceased to be such with the authoritative pronouncement by the U. S. Supreme Court—in 1940—in Thornhill v. Alabama, 310 U. S. 769.

Such freedom of expression nourishes the spirit and practice of civility. Man's instinctive urge to violence is thus conducted into peaceful channels.[3] "Freedom of expression is the well-spring of our civilization" (Dennis v. United States, 341 U. S. 494); and in Jefferson's felicitous phrase this includes "* * * the arraignment of all abuses at the bar of public reason." "When the channels of opinion and of peaceful persuasion are corrupted or clogged, * * * political correctives can no longer be relied on and the democratic system is threatened at its most vital point." (Jackson, The Struggle for Judicial Supremacy, 1949 Ed., p. 285)

The First Amendment is the "matrix, the indispensible condition of nearly every other form of freedom." (Palko

v. Connecticut, 302 U. S. 319, 327). Its fundamental guarantees of freedom of speech, of press, of the people to assemble peacefully and to petition for the redress of grievances, were the first of the Bill of Rights to be secured from state abridgment by the "due process" clause of the Fourteenth Amendment (DeJonge v. Oregon, 299 U. S. 353; Grosjean v. American Press Co., 297 U. S. 233; Gitlow v. New York, 268 U. S. 652; Hague v. C. I. O., 307 U. S. 496; see also Steelworkers v. Labor Board, 376 U. S. 492 and Sullivan v. Times, 375 U. S. 803). The counterpart of the great canon is to be found in our State Constitution—Art. I, §§8, 9.

In this light, the convictions here are ill founded—the demonstrators against notorious and long-standing racial discrimination were within constitutional protection. Moreover, properly construed and applied, the statute against disorderly conduct was not violated. Finally, procedural irregularity and substantial error on the trial, in any event, vitiate the judgments. Preliminary to dealing with these matters—in inverse order—let us look at the record.

The incidents complained of occurred on August 1, 1963, approximately an hour apart—at about 10:00 A. M. and 11:00 A. M.—at the site of a gate leading to a public housing project then under construction at Madison and Rutgers Streets in Manhattan. Picketing had commenced at about 6:00 A. M. A large detail of police were present. By ten o'clock members of the public were across the street, and press reporters and photographers were in the area. Wooden "horses" were used as boundary markers of the picketing permitted by the police. From Rutgers Street a private access road or driveway led to a wire fence containing the entrance gate to the project. The gate was kept closed except to give entry to vehicles. Rutgers Street traffic was not impeded. While passing vehicles slowed down to observe what was going on, officers in the street expedited their movement to keep the roadway clear.

To traffic in clarity, we must divide the defendants into two groups; and the interests of justice require a further particularization of the individual acts of the several defendants. Defendants Penn, Pitt, Pliskow and Levine partook of the incidents at 10:00 A. M.—and they were arrested shortly after that hour. Defendants Cannon, Ramos, McKenna, Chatkin, Bloom, Rivera and Gottlieb partook of the incidents at 11:00 A. M.—and they were arrested thereafter. The acts of the defendants differed!

The ten o'clock incidents all took place in front of the fence bordering the project. As a cement-mixing truck on the driveway approached the gate, defendants Levine, Penn, Pliskow and Pitt sat down in front of the fence. Only one —possibly two—of these defendants sat in front of the gate; neither of the others did so. All were some fifteen feet from the truck. A photograph (Exhibit 1) shows all these defendants sitting quietly, doing nothing. The driver of the truck testified that he heard no loud or boisterous language —they were singing. He remained in the truck when the defendants were requested to leave. Upon their refusal to do so, they were arrested and walked quietly to the police wagon.

The entire episode had taken about fifteen minutes. The driver had been inconvenienced briefly; the police were not opposed. The incidents took place not on the public street but on a private driveway. There was no actual breach of the peace—nor reasonable apprehension of it!

Further clarification requires that the "eleven-o'clock" defendants now be subdivided. Two defendants sat and one defendant lay in the private driveway leading to the fence; but there was no truck or other vehicle using the driveway at the time. Two defendants sat down in front of a cement truck in the street. Several minutes later a second cement truck arrived and stopped behind the first one in the street. After this second truck, stopped not by the pickets but by the first truck, had come to a halt, the last two defendants sat down in front of the second truck. Again the defendants were told to move, were arrested when they remained silent and, without resisting arrest, walked quietly to the patrol wagon. None had used loud or boisterous language—in fact, they had remained silent—and no breach of the peace occurred. The vehicular traffic had not stopped, having been routed around the trucks by the police. Again, there was no breach of the peace nor reasonable apprehension of it.

As to defendants Ramos and Rivera, there was confusion on the trial concerning their identification; prosecution witnesses placed them in different places at the same time. It was inevitable that when the trial ended this confusion still obtained; it was compounded by like factors.

The evidence applicable to the eleven-o'clock incidents obtruded itself to tell against the defendants concerned in the ten-o'clock occurrence—and conversely. With the best of intentions, it was impossible to judge each defendant on his own several acts; rather he was judged in a much broader frame of evidential reference. This resulted in an adjudication of a species of guilt by association. Hence, the collective trial and condemnation of the defendants were inadmissible in principle and violative of statutes (Code of Crim. Proc., SS 278, 279, 391; People v. Fringo, 13 A D 2d 887; People v. Namolik, 8 A D 2d 685; People v. Morett, 272 App. Div. 96; People v. Kanze, 200 Misc. 907; see also Allen v. Grella, 4 Misc. 2d 93).

To be sure, counsel had stipulated that the defendants be tried together; this was on condition, however, not only that separate verdicts be rendered in each case, but that the testimony would be applied to each defendant only to the extent that it in fact applied to him. We have seen, however, that this became virtually impossible. There were four categories—contingents—of defendants who were tried together—not even multiple individuals concerned with parallel acts during a single event. In this fact pattern, the misjoinder was so highly prejudicial and abortive of a fair trial that the interests of justice require reversal (Code of Crim. Proc., §527; People v. Namolik, supra; People v. Lombard, 4 A D 2d 666; People v. Connors, 13 Misc. 582). "Prejudice has consistently been held to occur when * * * (joinder) embarrasses or confounds an accused in making his defense" (Pointer v. U. S., 151 U. S. 396, 403, quoted in Cross v. U. S., U. S. D. C., N. Y. L. J., Vol. 152, #3, p. 1).

The stipulaltion of counsel does not save the result from condemnation; it cannot avail. Our competence supercedes it—our duty transcends it! Indeed, the vice inhered in the stipulation itself—it tainted the judgment *ab initio.!*[4]

The trial court committed substantial error in rejecting evidence concerning the existence and effect of racial discrimination in employment. Defendants' acts must be judged in the context of the demonstrations then taking place—and the right to demonstrate depended on the purpose of the demonstration (Giboney v. Empire Storage Co., 336 U. S. 490). Our Appellate Division said in Gaynor v. Rockefeller (21 A D 2d 92): "The racial policies of exclusion by some defendant unions * * * are of so long duration and so widely known that the courts might, if they so elected, take judicial notice of the fact. * * * their policies bar respondents * * * from employment in particular categories. Establishing the contention as a factual truth, in a proper proceeding, would permit legal redress" (p. 100).[5] If the fact of discrimination can serve as a predicate for redress in a civil proceeding, certainly it is relevant on such matters as wilfulness, *mens rea,* etc., in a criminal case. What a civil forum can take judicial notice of, surely is relevant in the context of the issue presented to a criminal court. The trial court's restriction of the defendants' proof was grievous, reversible error.

Dealing with substantive matters, it is manifest that the defendants' acts, judged severally as they must be, did not constitute disorderly conduct under the statute. They did not act in such manner as to cause a "disturbance of public order by an act of violence, or by any act likely to produce violence, or which, by causing consternation and alarm, disturbs the peace and quiet of the community" (People v. Most, 171 N. Y. 423, 429). The conduct sought to be deterred by the Penal Law must be considerably more serious than innocent or inoffensive action (People v. Carcel, 3 N Y 2d 327). Inconveniencing pedestrians, or vehicular traffic for that matter, does not suffice (People v. Nixon, 248 N. Y. 182, 187, 187-88); nor does lack of manners or good taste (ibid. p. 185). In this setting, only acts which, in the context of purpose, time, place and circumstances of the acts, would, if not stopped, actually engender a breach of the peace are within its ambit (People v. Perry, 265 N. Y. 362, 364; Bouie v. City of Columbia, — U. S. — 84 S. Ct. 1697. Otherwise, they are not to be so held (People ex rel. Clark v. Keeper of N. Y. State Reformatory, 176 N. Y. 465).

The complaint[6] was not established by the proof—and, on the proof, there was no likelihood of a breach of the peace or disorder. Defendants were said to have obstructed traffic; yet seven of the eleven defendants were not on a public street, they sat in a private driveway; two others sat before a truck which had theretofore come to a halt—and traffic was not seriously hampered. Defendants were charged with using loud and boisterous language; yet the proof was diametrically to the opposite. Defendants were accused of causing a crowd to collect; yet the evidence showed that the spectators had gathered long before either set of arrests. Their mere presence does not, of course, import punishable conduct within the meaning of section 722. In our metropolis, crowds are daily present to hear speakers, to watch a parade, to satisfy curiosity (People v. Kieran, 6 Misc. 2d 245, 266). No violence occurred and none was threatened; and the numerous police were there since early that morning—they were not called because of the defendants' acts. When arrested, the defendants submitted peacefully.

Thus, fairly evaluated, the record utterly fails as an adequate predicate for a conviction under the statute. As a matter of law, guilt under it was not established in point of fact beyond a reasonable doubt. If this represents a strict view of the evidence and of the law, it is indicated in criminal cases; that course uniformly has been followed by this Court. It is also becoming in an area of grave human concern.

In any event, we are constrained by supreme authority to nullify these convictions—the defendants' conduct came within the protective shelter of the First Amendment—whatever view we might otherwise have taken of it under our State Statute. (I do not doubt that the Court of Appeals would reach the same conclusion under our state constitutional provision. Art. I, §§8, 9.)

We have been instructed that in interpreting a general statute regulating public conduct we are required to "resolve any doubt 'in favor of the liberty of the citizen, rather than exercise what would be an unlimited, uncertain and arbitrary judicial discretion' ". (Downum v. U. S., 372 U. S. 734, 738). And that "a generally worded statute, when construed to punish conduct which cannot be constitutionally punished, is unconstitutionally vague." (Wright v. Georgia, 373 U. S. 284 at p. 293; see, also, Cafeteria Employees Union Local 302 v. Angelos, 320 U. S. 293; Stromberg v. California, 283 U. S. 359; People v. Muller, 286 N. Y. 281; Senn v. Tile Union, 301 U. S. 468). No construction of a statute is admissible which involves an inhibited application. An otherwise constitutional enactment may not be unconstitutionally enforced!

Hence, the orders of policemen could not make the conduct of the defendants, otherwise lawful, unlawful. "One cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." (Wright v. Georgia, supra, at pp. 291-292; Henry v. City of Rock Hill, 376 U. S. 776; see, also, Lombard v. Louisiana, 373 U. S. 267; Shuttleworth v. Birmingham, 373 U. S. 262; Johnson v. Virginia, 373 U. S. 61; People v. Galpern, 259 N. Y. 279, 281).

And it is equally clear that the protest need not be ineffectual to be immune from penalty. It is inherent in the constitutional guaranty that protest may be sufficiently potent to bring the grievance to the attendance of the public and government. (Thornhill v. Alabama, *supra,* at p. 96.) The fact that the action was taken according to a preconceived plan does not make it unlawful if protected by the Constitution (Taylor v. Louisiana, 370 U. S. 154, 155-156); nor because of possible disorder by others (Henry v. City of Rock Hill, 376 U. S. 776).

Where abridgement of freedom of speech is asserted, the Court must be scrupulous to examine the effect of the challenged arrest on this basic right (see Schneider v. State of New Jersey, 308 U. S. 147, 161). "In every case, the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." (Cantwell v. Connecticut, 310 U. S. 296, 304). *The issue, in each case, must be resolved whether the State interest has been pressed "to a point where it has come into fatal collision with the overriding interest protected by the federal compact"* (ibid. p. 307, emphasis supplied).

Only "when clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears", the State may intervene (Cantwell v. Connecticut, supra p. 308); absent these elements, the demonstration may not be arrested (Edwards v. South Carolina, 372 U. S. 229, distinguishing Feiner v. New York, 340 U. S. 315; Niemotko v. Maryland, 340 U. S. 268; Kunz v. New York, 340 U. S. 290; Matter of Rockwell v. Morris, 12 A D 2d 272, aff'd 10 N. Y. 2d 721, cert. den. 368 U. S. 913).

Edward v. So. Carolina, *supra,* decided last year, has several points of striking similarity to the facts before this Court. One hundred and eighty-seven students engaged in a protest march to the State House grounds. They walked around the grounds for approximately 45 minutes, carrying placards. Vehicular traffic at a nearby street intersection was slowed down and an officer was dispatched to keep traffic moving. There were 200 to 300 onlookers, but no evidence of violence was reported. Police protection at the scene was sufficient to meet any forseeable possibility of disorder. When the students were asked to leave, they refused and began to sing and were arrested. The Supreme Court ruled that although their conduct constituted a breach of the peace under State Law, the convictions infringed the students' constitutional right of free speech, free assembly and freedom to petition for redress of grievances, and reversed the convictions. (Followed in Fields v. So. Carolina, 375 U. S. 44; s. c. 372 U. S. 522.)

The true import of Edwards may be found in Henry v. Rock Hill, *supra,* wherein the Court stated at pp. 777-778:

"We now think Edwards and Fields control the result here. As in those cases, the petitioners here, while at a place where the state's law did not forbid them to be, were engaged in the 'peaceful expression of unpopular views' (Edwards v. South Carolina, 372 U. S. at 237). They assembled in a peaceful, orderly fashion in front of the City Hall to protest segregation. They carried signs to that effect and they sang patriotic and religious songs. Although white onlookers assembled, no violence or threat of violence occurred and traffic was not disturbed. After fifteen minutes of this, they were arrested for failure to disperse upon orders. Here, as in Edwards and Fields, petitioners 'were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court "not susceptible of exact definition"' (ibid.). And here as there 'they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community as to attract a crowd and necessitate police protection' (ibid)."

These cases foreshadowed the complex of decisions rendered by the Supreme Court in June of this year: Bouie v. City of Columbia, — U. S. —; 84 S. Ct. 1697; Barr v. City of Columbia, — U. S. —; 84 S. Ct. 1734; Bell v. Maryland, — U. S. —; 84 S. Ct. 1814; Griffin v. Maryland, — U. S. —; S. C. 1770; Robinson v. Florida, — U. S. —; 84 S. Ct. 1693. In *Bouie,* the Court, by vote of 6 to 3, set aside the 1960 South Carolina sit-in convictions of two Negro students, five Justices holding that the students had had no fair warning that the state trespass law, prohibiting entry after warning, also applied to failure to leave after request.

In *Barr,* the Court unanimously reversed for lack of evidence the conviction of five South Carolina sit-in students for breach of the peace. In *Bell,* the Court by vote of 6 to 3, vacated the 1960 trespass convictions of 12 sit-in demonstrators at a Maryland restaurant, five Justices holding that the Maryland courts should have a chance to re-examine the convictions in light of subsequent passage of state public accommodations laws and the sixth finding their arrest and conviction unconstitutional. In *Griffin* the Court by vote of 6 to 3, set aside the trespass convictions of five Negroes who sat in at a Maryland amusement park, five Justices resting on the fact that a county deputy sheriff—an agent of the state—was employed by the park to carry out its policy of discrimination. In *Robinson,* the Court unanimously reversed the trespass convictions of 18 Florida restaurant demonstrators because state policy of segregation was embodied in a regulation requiring restaurants to have separate white and negro washrooms.

The determined intent of the High Court is unmistakably clear. Whatever the variant syntactic, juristic or philosophic patterns of these cases—and whatever the immediate context—their essential thrust—and reach—are the same; an otherwise valid state proscription is unavailing—in enforcement—when it collidies with a First Amendment guaranty made obligatory on the States by the due process clause of the 14th Amendment. Mr. Justice Brennan, writing in Malloy v. Hogan, — U. S. — 84 S. Ct. 1489, at the same Term for the majority, summed it up: "Gitlow v. New York (268 U. S. 652) initiated a series of decisions which today holds immune from state invasion every First

Amendment protection for the cherished rights of mind and spirit—the freedoms of speech, press, religion, assembly, association, and petition for redress of grievances''.

''Construction of the Federal Constitution by the Supreme Court of the United States is binding on all State Courts'' (People v. Muller, 286 N. Y. 281, 284). Imbued with a sense of loyalty, a State's judiciary, to which is entrusted the high responsibility of enforcing its laws, may find it difficult to assimilate this view. But, adopting Josiah Royce's exquisite formulation of the imperative of ''loyalty to loyalty'' it becomes its bounden duty to follow the ''supreme law of the land'' which preempts any other.[7]

A reading of the cases leads me to the inescapable conclusion that irrespective of any view which may be taken of errors on the trial, its procedural irregularity or the sufficiency of the evidence—and I firmly believe they invalidate the convictions—in any even[t], we must reverse the convictions against these defendants on constitutional grounds.

I am loath to close—lest it seem to my brethren that I have overlooked certain matters which I know they deem important. I would render it explicit that I have not ignored them. Every art in its execution requires a discriminating elimination—care must be taken to leave out nothing vital yet leave out more than is retained. The judicial discipline is an art—infinitely more than a mechanistic operation of science—which demands restraint in certain areas at certain times in the context of need. The law is replete with ambivalence in the articulation of its principles—arising from a practical regard for the actions of mankind. It may not shrink, therefore, from a corresponding moderation in the application of those principles. The dichotomy of the quest and the ideal is often resolved by aspiring to approximation, not perfection—in what Paul Tillich calls "the ambiguity of perfection"—an adjustment to "a world of words, and compromises, and niceties of conduct."

In dealing with highly volatile forces "not merely intellectual but also passionate," the judiciary may not always find it possible to achieve a perfect solution in the interplay between dry legal considerations and dynamic social realities. It cannot always make infallibly correct judgments; it must content itself with "splendidly imperfect" ones in the anguished choice among competing goods, in the effort to potentiate and perpetuate "principles of humanity and civil liberty" Bram v. United States, 168 U. S. 532).

For, as it has been said, there is no history without tears—and history is being written, re-written. Nor is there any mechanical yardstick—legal or otherwise—by which fundamental social re-adjustments in our country can be measured—or resolved. Progress does not move along a line of linear advance but rather in some cyclical process, a distinguished American historian observes.[8]

And, lest we forget—the fortunes of civil rights for the Negro are inextricably inter-related to the civil liberties of all Americans! In an exposition "To Be Equal", Whitney M. Young, a foremost Negro spokesman, correctly sums it up: "The negro is a barometer of whether or not the American free enterprise system really works." I think it was Herbert Spencer who insisted that: "we cannot be moral unless [until] all are moral, we cannot be happy unless [until] all are happy, we cannot be free unless [until] all are free''.

The challenge is upon everybody to establish the justice of the Negro's many grievances—it is essential to racial peace. The problem must be solved by all possible skills of citizenship and government—this includes the judicial branch so far as it lies in its competence.[9]

''Every continent has its own great spirit of place. . . . Every people is polarized in some particular locality'', said D. H. Lawrence. But the spirit of America transcends geography and the life of our people is polarized in ''the supreme law of the land.'' The center of gravity of the organic functioning of our body politic resides in the Constitution—its dynamic is the imperative of equality in freedom.

In an ''optative mood''—in Emerson's phrase—we discern that ''at the end of the long corridor of night a crack shows beneath the door''. Let us not close it. Let us rather open it wide. Too many have waited too long for too little! And let us not be afraid to listen to the voice of a new *experience*—not of a mere *idea*—the vibration of the stirring of the homunculus of the new epoch in our developing civilization—the reality of equality, not the concept alone.[10]

It has been remarked that the basic difference between the Negro protest in our country and in Africa—is that here it is not revolutionary; in a deep sense it is conservative. The negro is not agitating for a new social order but for his fulfilment in that which already exists—and of which he has a fundamental right to be an integral part.

And the "American Dilemma" can be resolved only by recognizing his inalienable right "to be equal".

In the continuing dialogue that goes on between the present and the past to shape the future, we must speak our part according to the light—and opportunity—given to us. Let us honor the call "so to speak and so to do as they shall be judged by the law of liberty."

I would reverse the convictions, remit the fines and dismiss the informations.

FOOTNOTES

1. The Sonhedrin at Usha ordained that no member could be excommunicated for his views regardless of circumstances. My revered ancestor, Rabbi, Judah Loewe (1512-1609) of Prague, who was a most passionate defender of his people and its faith in numerous dialogues declared: "One ought not reject the words of an opponent. It is preferable to seek them out and study them. Thus shall a person arrive at the * * * full truth * * *."

In a 6000 word dissent, Mr. Justice Storey wrote in The Nereide, 13 U. S. 388, 455: "* * * I hold it an indispensable duty not to surrender my own judgment, because a great weight of opinion is against me, a weight which no one can feel more sensibly than myself."

2. Subdivision 2 proscribed acts which annoy, disturb, interfere with, obstruct or are offensive to others; subdivision 3, congregating with others on a public street and refusing to move on when ordered by the police. The term "congregating" implies "a considerable number of persons * * * or a crowd * * * and a crowd has been defined as a throng, multitude or great number of persons * * *" (People v. Carcel, 3 N Y 2d 327, 333).

3. We must be scrupulous to permit such free expression not only to abort violence but even *non*-violent resistence [sic]. Civil disobedience has a long history—going back to Ghandi, and beyond him to Tolstoy and Thoreau. The incarnation of its spirit is best expressed in the Indian word "satyagraha". This connotes not a merely negative aspect, but a dynamic one. When civil disobedience, however, involves an infraction of statute not within constitutional protection (See, Cantwell v. Conn., 310 U. S. 396), those exercising it must, in good conscience—by their own discipline—be willing to submit to the sanctions of our civil authority. But we, who are called upon to vindicate such penal sanctioning, must be discreet and sure that such an infraction has in fact occurred—beyond a reasonable doubt, a norm which obtains in all criminal cases.

4. "This idea of a fair trial has been the greatest contribution made to civilization by our Anglo-American polity. Our liberties are not based on general indeterminate phrases. They are based on practical legal rules." From an address by Professor Goodhart at the Harvard Club on June 4 under the sponsorship of American Foreign Law Association and the foreign law committee of the Association of the Bar of the City of New York.

And Brandeis wrote: "In the development of our liberty insistence on procedural regularity has been a large factor" (Burdeau v. McDowell, 256 U. S. 465, 477). Frankfurter added: "The history of liberty has largely been the history of observance of procedural safeguards" (McNabb v. United States, 318 U. S. 332, 347).

5. Study of the report on discrimination in employment of the Senate Committee on Labor and Public Welfare (Report #867, 88th Cong., 2nd session, 1964) on behalf of the Association of the Bar of the City of New York led two of its committees to observe:

> "The reports indicate that non-whites earn significantly less than whites of lesser training and are frequently compelled to accept unskilled or semi-skilled jobs at low wages-jobs which are being wiped out at an accelerating pace by automation. They find that there has been disproportionately high unemployment levels of non-whites, who comprise 11% of the labor force but 22% of the unemployed." (Report on Proposed Fed. Leg. Relating to Equal Employment Opportunity by The Committee on Fed. Leg. and the Comm. on Labor & Soc. Sec. Legislation, Record, Vol. 19, #5, pp. 231-232; see also ,matter of Hughes—Tool Co., N. L. R. B., decision 7/2/64; Steele v. Louisiana & Nashville R. R., 323 U. S. 192; Colorado Commission v. Continental, 372 U. S. 714.)

6. The several complaints, as amended on the trial, charged that the defendant named had placed himself in a sitting position in the roadway, obstructing the free passage of vehicular traffic and had used loud and boisterous language, causing a crowd to collect; and that the complaining police officer stated in each case that he had asked the defendant to move out of the roadway on several occasions and that the defendant had refused.

"Convictions upon a charge not made would be sheer denial of due process." (DeJonge v. Oregon, 299 U. S. 353, 362.)

7. Thus it has been clear for a long time that the freedoms of the First Amendment are obligatory upon the States by virtue of the Fourteenth Amendment. It would seem that a new era is faintly dawning. The colloquy of these great canons consulting together seems to be broadening the concept of "state action" to comprehend state *in*action as well. That is to say, when a state *fails* to accord equality or due process in the exercise of the guarantees of the First

Amendment by legislation or decision, the Supreme Court may act mandatorily or by inhibition to fill the void. Congress, too, can act. Thus, the Federal legislation would be dealing with State conduct which includes *in*action. Such inaction is as much proscribed by the Fourteenth Amendment as affirmative action, if it results in a denial of equal protection of the laws. At least in part, the Civil Rights Law of 1964 is based on this premise; in any event, it can be supported on that predicate. At the National Conference of Trial Judges which met last year in conjunction with the Annual Meeting of the American Bar Association, Chief Judge Desmond urged abolition of Federal Court power to release State prisoners by *habeas corpus,* at the same time urging that Congress enact precise constitutional requirements for State courts to apply. He was right; for, as he said, the present system causes "much confusion, much delay and * * * increase in the business of already overburdened courts." That situation, however, was not the fault of the Federal Judiciary alone; State courts had been adhering to the outmoded rule in *Defore* before the Supreme Court overruled *Wolff* and adopted *Mapp;* there was a vacuum in procedural regularity which had to be filled by the *habeas corpus* expedient. This year, at the Conference of Chief Justices meeting in conjunction with the American Bar Association gathering, Judge Desmond again called for an "objective, thorough, calm, scholarly, scientific" study of the allocation of judicial power (New York Times, August 8 and 9, 1964). Mr. Justice Brennan called on State Judges "to share fully in the job of enforcing federal constitutional rights." He suggested that if the State courts acted more vigorously to do so, friction between them and the Supreme Court would be minimized.

8. In a review of "The Quest for the Dream" by John P. Roche, he adds: "Our 20th century history (is) a story of ethnic wars of various kinds, wars incidental to transforming the old America into a multi-ethnic, multi-religious urban society. For all but the Negroes, the largest battles have been won, and the Negroes themselves have launched at last upon a campaign of self-assertion which cannot be forever denied. . . . The brutality of yesterday was not even a response to any militancy on the part of American Negroes or to any improvement in the status of the race—it was merely an ugly response to their being there at all."

9. In a recent column, Walter Lippman says: "For an increasing number of Negroes their grievances are intolerable and will not be

endured very much longer. The essential point is to prove to the large mass of peaceable Negroes that there is light at the end of the tunnel. . . . The Negro community must be enabled to believe that the public authorities are their hope and not their enemy."

10. "It is hard to listen to a new voice as it is to listen to an unknown language. . . . Out of fear. . . . The world fears a new experience . . . (as it) doesn't fear a new idea. . . . It is the shifting over from the old psyche to something new, a displacement. And displacements hurt" ("Studies in Classic American Literature"—D. H. Lawrence).

APPENDIX B

Order Amending Remittitur

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, *v.* SARA E. PENN, HELENA L. LEVINE, BARBARA PLISKOW, EDWARD W. PITT, BENITA T. CANNON, CLAUDIO RAMOS, THOMAS MCKENNA, MERYL CHATKIN, ISIDORE T. BLOOM, DAVID RIVERA and SAUL GOTTLIEB, Appellants.

Submitted September 20, 1965; decided September 23, 1965.

Motion to amend remittitur granted. Return of remittitur requested and, when returned, it will be amended by adding thereto the following: Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United Sttaes, viz.: Whether the rights of appellants under the First and Fourteenth Amendments were violated. Appellants contend that their conduct was protected as acts of free expression and that the convictions thereby violated the First and Fourteenth Amendments. They also contend that section 722 of the Penal Law, as applied to them, is unconstitutional. The Court of Appeals considered these contentions and held there was no deinal of appellants' constitutional rights. [See 16 N Y 2d 581.]

413 Rutherford St Tifton Ga
31794.

Tifton

Rutherford

Sept. 11. 1966

from Mrs Ida M.

To The Georgia Council on
Human Relation

I am riting for a little information
on this School Compliance
We have no Busses to take the
children to the entergrated
Schools no transportation
at all only I have 2 grand sons
I pay $ 2.50 per week for each
one which amount to $ 5.00
a week by the time school close
I will be in the hole. Say comply
with the Government We are so far
from it I went to see our superintender
Dr Guy Taylor about the Busses
to take the children to and fro
he told me the Busses had not
ben re-routed as yet and didnt
say anything about making
any arrangement so any way
he say didnt have enough Busses
they was white children at a
Distance out of town wanting
transportation but I dont think

I recivedd your letter on council

the GovernMent Mean it that way
say. comply Mean in every Way
if I had Known that the Colord
people Would Not have transportation
and Would have to pay for our
children to go to a White School
No. never never Would I assign
there there this Knox us off our
feet. Figure 9 Month what it will
Cost 2 children $ 5.00 a week
it might go Higher if I have to
call a cab I am paying Friend
and neighbor for transportation
We only here about program s
they is so Little we no or get
a chance to excise because
we dont no our rights We so
long have been cut off. I have
Freind to tell me they Would
like to have a copy of no your
rights so I am sending $1.00 for
a copy I am a poor hard
working person make out on cheap
Job: some time no Job please
Send information or please send
to Washington to see what can be
done Mrs Icia Mae pettiford

Tifton

September 14, 1966

Mrs. Icia M. Pettiford
413 Rutherford
Tifton, Georgia 31794

Dear Mrs. Pettiford:

I am very distressed to hear of your difficulties with the school integration. Thank you for the $1.00 for the "Know Your Rights". We will send it as soon as it comes from the printer. It will only help you on a certain portion of our rights, however, I am also sending another manuel which you might find helpful for yourself or neighbors.

In this new day, there is so much to learn and so much to do that it is hard to know where to start. I think you have made a wise decision to have your children go to the white school. In the world of tomarrow our children will have had the opportunity of starting early and being prepared for this new life.

Can you tell me how far you live from the white school? Maybe your friend can clock it on the speedometer. Also how far was it to the Negro school? We need to know the distances in order to make the proper complaint to Washington.

Do the children have to work harder than they used to? Are the teachers helpful? I do hope they are happy and learning a great deal.

As soon as I hear from you concerning the distances, I will write to Washington. I hope to be down that way this fall and maybe we can have a chance to talk together about many things.

Please let us hear from you often.

Sincerely yours,

Mrs. Frances Pauley
Executive Director

FP/es

Sept. 25 1966

413 Rutherford St,
Tifton Ga

Dear Mrs Frances pauley Just a few More lines to You all I didnt Send the Distance to and fro from the Negro School in the other Letter as You Say So much to Say and do We forget some of the thing it is about 5 or 6. Blocks away from My home ~~but~~ to the Negro School but that dont mean nothing that dont help intergate or it dont comply So we can Keep fund also I am looking for an Anser Shortly I would like to learn More about what we can do or need to do to help our Self I will rite every time I get a Chance Sincerely Yours

Mrs Icia. mae pettiford

Tifton

September 27, 1966

Mrs. Icia Mae Pettiford
413 Rutherford Street
Tifton, Georgia

Dear Mrs. Pettiford:

You are right. It does not matter how close you are to the Negro school! I have sent the complaint about the bussing to Washington. When I hear I will let you know.

Thank you for keeping up the struggle. This means much to everyone not only now but for the future.

Sincerely yours,

Mrs. Frances Pauley
Executive Director

FP/es

Mrs. Frances pauley
Executive Director

Dear Mrs pauley

I received your letter also "Know your rights" and manuel. I have had the miles check on the speed meter from the white school One child go to Annie Belle clark school. 4. 20 miles one child go to Tift, Co. High 3. 1 miles on check speed meter the distance from negra school industrail school $\frac{1}{3}$ mile- Wilson High 2. 25 from my home. the children are doing fine they like it it do not matter about names being call they do not work no harder but get better understanding the teachers are very helpful they are learning a great Deal. Mr. Thomas was by here Sunday we are Glad to have him come, also you are invite to come and help us get straight out any time you wish. I'm still paying because

We haven got no busses Started
yet our Superintendent haven Said
nothing About transportaion
yet I do hope to comply
with the Government that is why.
I and other Send these children
to these distance schools trying
to comply. Some one had to go
to try to preserve the Government
Fund's because we all no we need
School. as you say they is a lots
to do So I decided to make a
Start, I am riting for help because
I need help poor hard worker
as I said for low wages nothing
to pay transportaion with, leave,
of Someelse to try to give
Children Education. which is very
much need I hope Dr. Guy Taylor
See that we get Buses Routed out
here and give us under standing
I will rite evey week
Escuse this Bad Writing
From Icia Mae Pettiford

Sincerely yours
Mrs. Icia. M. Pettiford

September 26, 1966

Mr Jack Nix
Superintendent of Schools
State Capitol
Atlanta, Georgia

Dear Mr. Nix:

We wish to call to your attention the hardship that is being endured by Mrs. Icia Mae Pettiford, 413 Rutherford Street, Tifton, Georgia.

She has acted according to the information given her by the local school board and has transferred her two grandchildren under the Freedom of Choice Plan. They are attending school and seem to be making a good adjustment. However, no bussing has been arranged for these children. One goes to Annie Belle Clark School, 4.2 miles from its home and one goes to Tift County High School, 3.1 miles from home.

Could you help the local school board comply with the regulations and see that these children have the advantages of bussing? It is now costing the grandmother $5.00 a week to transport them.

We greatly appreciate your efforts in carrying out the law and making it possible for our children to receive their rights.

Sincerely yours,

Mrs. Frances Pauley
Executive Director

FP/es
cc: Mrs. Icia M. Pettiford
Paul Rilling
Frank Corrigan
Supt. Guy L. Taylor
U.S. Commission on Civil Rights

Struggling for rights

Dec. 15. 1466

o. the Georgia Council
on Human Relation S
hes is To. inform you
at Nothing has ben
one about the Transportation
r Negro Children on our
ide of Town two 2 men
t diffent time has ben
ear but we still waiting
r results I haven be To
T.A. Meeting because I
have to try to catch
hese little Jobs So I can
ave the Money each
eek to pay for transportation
hen thing get Strait
will attend Your Meeting

and P.T.A. Meating I am
sending you this little
clipping from our news
paper please pass this
to the U.S. Department
of Justice Washington D.C.
I no it takes time to
work thing out but
our Supt. is not say
Nothing about the
better ment of the
negro we had it had
all our life also our
boys is having it rough
in Vet. Nam.

Sincerely Yours.
Mrs Icie M. Pettiford

Georgia Council ON HUMAN RELATIONS
52 Fairlie Street, N. W. • 404/525-6468 • Atlanta, Georgia 30303

December 20, 1966

Mr. Carl Rachlin
150 Nassau Street
New York, New York 10038

Dear Carl:

Thanks for the good lunch and the encouragement.

I plan to go to Fitzgerald the first week in January and if I can squeeze it in I'll spend some time in Cordele at that time. I will at least check if HUD has been in.

I appreciate meeting Mr. Moore. Tell him as soon as I can get over the Christmas I shall put my mind on the Welfare or Education Conference. I want to talk with Rev. Hamilton before I make the final decision.

I hope my trip was profitable financially. I'm writing up the proposals. Then when they get mailed, there's nothing to do but pray, I reckon.

Please let's keep in touch. Tell Ronnie thank you for me.

Sincerely yours,

Frances

Mrs. Frances Pauley
Executive Director

FP/es

MR. JOSEPH HENDRICKS, PRESIDENT
MRS. FRANCES PAULEY, EXECUTIVE DIRECTOR
THE REVEREND AUSTIN FORD, FIRST VICE-PRESIDENT
REV. C. S. HAMILTON, SECOND VICE-PRESIDENT
MR. C. W. AYCOCK, SECRETARY
MR. JOHNNY GLUSTROM, TREASURER
MR. HUBERT THOMAS
MR. PAUL WAHRHAFTIG

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

December 22, 1966

Mrs. Frances Pauley
Executive Director
Georgia Council on
Human Relations
52 Fairlie Street, N.W.
Atlanta, Georgia 30303

Dear Frances:

I was so glad you could come to New York and I could see you. I am waiting for HUD to tell me when one of their top people is going to inspect personally. It is my intention then to call you and perhaps both of us can go down to be there at the time of the inspection at Cordele.

I hope you get all the money you ask for because I am sure you deserve it. With best regards.

Sincerely,

Carl

Carl Rachlin
General Counsel

CR:gtc

Contributions are deductible for income tax purposes

■ *president;* Andrew E. Norman ■ *vice presidents;* William S. Ellis, Nannette Sachs ■ *secretary;* Ezra Levin ■ *treasurer;* Shelley Appleton ■ *executive director;* Marvin Rich ■ *leadership development director;* Ronnie M. Moore ■ *legal director;* Carl Rachlin ■ *BOARD OF DIRECTORS;* John P. Allison ■ Robert Ausnit ■ James Baldwin ■ Katrina McCormick Barnes ■ Canon James P. Breeden ■ Dr. Kenneth B. Clark ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S.J. ■ John Henry Faulk ■ Michael O. Finkelstein ■ Doris Freedman ■ Dr. Edward L. Gibson ■ J. T. Harris ■ Claude Heckscher ■ Norman Hill ■ Clarence B. Jones ■ Dr. Archie Lacey ■ Joann List Levinson ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Richard J. Schwartz ■ Elaine Slater ■ Norman Thomas ■ Rowland Watts ■ Pearl L. Willen

Georgia Council ON HUMAN RELATIONS
52 Fairlie Street, N. W. • 404/525-6468 • Atlanta, Georgia 30303

December 22, 1966

Mr. Carl Rachlin
Scholarship Education & Defense Fund
For Racial Equality
150 Nasseau Street
New York, New York

Dear Mr. Rachlin:

I have another problem. This is school desegregation. There is a lady in Tifton who has transferred her grandchildren to the white school and they still, after a whole term of school still not being bussed. The grandmother pays $5 a week to have the children transported to school.

I have complained to Washington, to the state school superintendent. The grandmother has complained to the local authorities. I think we have grounds for a good case.

I know Inc. Fund is not interested in any more school cases - they have so many. I just wondered if you are interested. If you are, I will certainly do a better job on getting the facts together. I am enclosing some of Mrs. Pettifords letters.

Thanks so much.

Sincerely yours,

Frances

Mrs. Frances Pauley
Executive Director

FP/es
Enclosures

3x62

Mr. Joseph Hendricks, President
Mrs. Frances Pauley, Executive Director
The Reverend Austin Ford, First Vice-President
Rev. C. S. Hamilton, Second Vice-President
Mr. C. W. Aycock, Secretary
Mr. Johnny Glustrom, Treasurer
Mr. Hubert Thomas
Mr. Paul Wahrhaftig

December 29, 1966

Mrs. Frances Pauley, Executive Director
Georgia Council on Human Relations
52 Fairlie Street, N.W.
Atlanta, Georgia 30303

Dear Frances:

I have your letter regarding Tifton, Georgia. We are getting to work on the problem and I am already lining up legal assistance to see what can be done. Please get all the details that you can, including number of families served, number of children involved, cost per week to each family for getting a child to and from school;are they any Negro children being bussed, if so, how many? Are they any white children not bussed for any special reasons.

Are they Negro teachers in the school, if so, how many and what grades do they teach ? Has this desegregation come about because of a voluntary act or is it the result of a court order ? If so, please send me a copy of the court order.

Has there been any action taken by the United States Office of Education with regard to this school system, how many schools in the system ? What is the number of Negro and white children in each school and when did the first Negro child enter a formerly white school?

By the way, have you heard from the people in Cordele indicating if the officials from Washington have investigated.

Hope to see you soon.

Sincerely,

Carl Rachlin
General Counsel

CR:gm

Georgia Council ON HUMAN RELATIONS
52 Fairlie Street, N. W. • 404/525-6468 • Atlanta, Georgia 30303

January 24, 1967

Mr. Carl Rachlin
General Counsel
150 Nassau Street
New York, New York 10038

Dear Carl:

I'm sorry I haven't written sooner, but I didn't have the info.

The Tifton case is out for the moment. The lady would not be a good plaintiff. The High School boy told her (his grandmother) one thing and the school another. However, there should be a case about bussing. I tried to get back today to see some neighbors but I got delayed by a wreck on the highway and had to give it up. I have talked with the school officials. They haven't any idea of really integrating the schools. I wish you could have heard their conversation.

I'll be back in the area in a couple of weeks and maybe then I'll have time to see the neighbors. Justice and HEW have been in but done nothing. HEW says the superintendent is O.K.

As for Cordele - as far as I can find out no one from Washington has been there. The housing authority has finally started repairing the playgrounds. Things there generally are quiet.

Right now we are up to our ears in meetings. We are having six area school desegregation workshops on Saturday the 28th, Feb. 4, 11 and 25th. Then we have a Welfare training program for a few leaders. Not the big meeting we talked about in your office. It is on Saturday, February 18th.

on Feb 18th

I, one who doesn't believe in 'meetings', seem to really be a backslider!

Hope to see you soon.

Sincerely yours,

Mrs. Frances Pauley

FP/es

Mr. Joseph Hendricks, President
Mrs. Frances Pauley, Executive Director
The Reverend Austin Ford, First Vice-President
Rev. C. S. Hamilton, Second Vice-President
Mr. C. W. Aycock, Secretary
Mr. Johnny Glustrom, Treasurer
Mr. Hubert Thomas
Mr. Paul Wanrhaftig

[N.D.]

From the Desk of – Frances Pauley
Georgia Council on Human Relations

Dear Carl, -

I'm coming money hunting next Monday [illegible] 12th - I'll be in N.Y. all week and will call you -

Washington has sent no one to Cordele -

I will be at the Park Sheraton - Maybe you will join me for lunch or drinks or dinner some day -

I'll call Monday -

Frances -

Phil —
Ci-7-8000 —
Room
1401

CITY OF PHILADELPHIA V. PHILA[illegible]
1963-1967

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT
****

MISC. NO. 44-A TERM, 1965

Misc, DKT. 14

44A

COMMONWEALTH OF PENNSYLVANIA
(City of Philadelphia)

vs

JEROME DORTORT, JAKE JILES,
FREDERICK FELDMAN, FRANK HALEY,
GEOFFREY LOBENSTINE, MARGARET
NEISSNER, FLORENCE JOHNSON,
SUSAN MAYER, LILLIAN MIRMAK,
WALTER LIVELY,
Petitioners

PETITION FOR ALLOWANCE OF APPEAL FROM THE DECISION
OF THE SUPERIOR COURT
****
At October Term, 1964 - No. 572

WILLIAM LEE AKERS, ESQUIRE
803 One East Penn Square Bldg.
Philadelphia 7, Pennsylvania

HARRY LORE, ESQUIRE
135 South 19th Street
Philadelphia 3, Pennsylvania

Attorneys for Petitioners

Filed April 21, 1965

INDEX

PAGE

I. THE SUPERIOR COURT MISCONSTRUED ITS SCOPE OF REVIEW 1

A. The Superior Court's Scope of Review Was Too Narrow by Constitutional Standards..... 1

B. The Superior Court's Scope of Review Was Too Narrow by the Law of the Commonwealth.. 3

II. THE SUPERIOR COURT FAILED TO CONSIDER A SUBSTANTIAL FEDERAL QUESTION...................... 9

III. THE APPEAL CONTAINS SUBSTANTIAL QUESTIONS OF FIRST IMPRESSION IN THE COMMONWEALTH........... 10

APPENDIX - OPINION OF THE SUPERIOR COURT

TABLE OF CITATIONS

****

PAGE

City of New Castle v. Genkigen, 37 Pa. Super 21........ 4

Commonwealth v. Antone, 22 Pa. Super 412............... 4

Commonwealth v. Beatty, 91 Pa. Super 37................ 4

Commonwealth v. Betts, 76 Pa. 465...................... 4

Commonwealth v. Burkhart, 23 Pa. 521................... 4

Commonwealth v. Hanzlik, 400 Pa. 134................... 4

Commonwealth v. Nesbit, 34 Pa. 398..................... 4

Garner v. Louisiana, 368 U.S. 157...................... 1

Mahanoy City v. Wadlinger, 142 Pa. 308................. 4

Thompson v. City of Louisville, 362 U.S. 199........... 1, 2

STATUTES

Act of May 22, 1722, 12 P.S. 1091...................... 6

Act of March 10, 1810 P.L. 208, Section I, 42 P.S. 242.. 6
Section IV, P.L. 211; Section XXII, 42 P.S. 957.. 6

Act of March 15, 1858, P.L. 114 Section 1, 53........... 4
P.S. 17082.. 4

Act of June 24, 1895, P.L. 212 Section 7................ 6

Act of May 5, 1899, P.L. 248............................ 7

Act of March 2, 1923, P.L. 3 Section 7(c)............... 7

Act of May 21, 1941, P. L. 47 Section 7................. 8

Act of September 18, 1961, P.L. 1464, 19 P.S. 12.1 and.. 4
19 P.S. 12.2.. 4

Act of August 14, 1963, P.L. 819, 17 P.S. 181 and....... 8
Section 4... 8

The petitioners request the allowance of an appeal from the decision of the Superior Court and relate the following reasons therefore:

I. THE SUPERIOR COURT MISCONSTRUED ITS SCOPE OF REVIEW.

  A. The Superior Court's Scope of Review Was Too Narrow by Constitutional Standards.

  B. The Superior Court's Scope of Review Was Too Narrow by the Law of the Commonwealth.

II. THE SUPERIOR COURT FAILED TO CONSIDER A SUBSTANTIAL FEDERAL QUESTION.

III. THE APPEAL CONTAINS SUBSTANTIAL QUESTIONS OF FIRST IMPRESSION IN THE COMMONWEALTH.

ARGUMENT

I. THE SUPERIOR COURT MISCONSTRUED ITS SCOPE OF REVIEW

A. The Superior Court's Review Was Too Narrow By Constitutional Standards.

In 1960, The United States Supreme Court decided Thompson v. City of Louisville, 362 U.S. 199. In that case, the the defendant was charged with violating a city ordinance prohibiting loitering and disorderly conduct. By Kentucky law, the proceeding was civil in nature, but upon default of payment of a fine, the defendant could be imprisoned. The defendant was fined $10.00. By the law of Kentucky, he had no right of appeal on its merits. The defendant's argument was that there was no evidence consonant with guilt adduced at his trial. There was testimony, but the defendant argued that the acts described in the testimony were not the acts prohibited by the ordinance. The Supreme Court noting that no other state court would evaluate the evidence, did so itself and found it lacking. The Court agreed that the acts of the defendant described in the testimony did not conform to those prohibited by the ordinance, which it also found necessary to evaluate.

Finding that the evidence did not indicate guilt, the Court reversed the conviction as a denial of due process. It clearly ennuciated the constitutional requirement that there be a record from which guilt may be ascertained and absent such a record, no penalty can be extracted or imposed. The rule of Thompson was reiterated in Garner v. Louisiana, 368 U.S. 157 and is now considered settled. It was an idea whose time had come.

In the present case, Dortort et al. were convicted of violating a city ordinance and sentenced to a fine or imprisonment. Both Common Pleas and the Superior Court, for different reasons, refused to consider or evaluate the evidence or lack thereof. Both Courts were apprised of the rule of the Thompson case. Neither Court nor either of the two prosecutors has ever distinguished Thompson or purported to apply its rule. The Superior Court relied for its decision on Mr. Chief Justice Sharswood speaking in 1882 and on Mr. Chief Justice Frazer in 1934. Petitioners suggest that whatever the rule was in 1882, the present rule is that the evidence must support in conviction.

The Superior Court purports to pass upon all constitutional questions. The evidence and its conformity to the ordinance under which petitioners were convicted is a constitutional question. Yet the Superior Court expressly refused to consider it. The rule of Thompson requires an enlargement of the Court's scope of review (regardless of the Act of 1810). A review of the question presented cannot be avoided without denying constitutional rights.

The crucial section of the record appears on page 9a of petitioner's paper book. It shows that four witnesses testified. Whether their testimony established guilt or innocence cannot be determined. The record is entirely blank. There is no summary of evidence or finding of fact. There is nothing to show that the complaint made by Frank Rizzo was true in fact.

Petitioners aver and believe that this omission is not due to inadvertance or lack of knowledge by the Magistrate. These petitioners were previously convicted by the same Magistrate for the same act. The Magistrate's return from the first conviction did state the evidence. That conviction was subsequently reversed and a verdict of not guilty entered as to all petitioners (page 2a). It is a permissible conclusion that the present omission was deliberate and designed to thwart review.

Whatever the reason for the present record, it is insufficient to sustain the conviction below and cannot be affirmed

B. The Superior Court's Scope of Review Was Too Narrow By the Law of the Commonwealth.

The Superior Court held that the Act of 1810 restricted its scope of review to narrow certiorari. The Act of 1810, however, does not apply to this case.

1. The Act has never applied to those ordinance violations which are in the nature of a public offense. Here the ordinance prohibits misuse of city property, etc. City property is, of course, public property. The distinction between a public offense and a private offense is made clear in the cases. Where the offense is an injury to a specific person it is a private offense, civil in nature, and the Act applies. Where the injury is such that no specific person has a greater interest in the offense than the public generally, the offense is public, criminal in nature, and the Act does not apply.

In Com. v. Betts, 76 Pa. 465, the defendant stopped a drainage ditch thereby flooding a public road. This was a public offense. In contrast, Mahanoy City v. Wadlinger, 142 Pa. 308, applied the Act to an action of debt for the use of a slaughter house in a manner so as to annoy the adjacent neighbors. This distinction is quite clear in the earlier cases. In the later cases, the distinction was sometimes obscured by the lack of a description of the conduct involved. Some confusion has resulted and only a careful examination of the cases and the offense involved can assure the proper application of the law. Since the instant case is a public offense it falls in the line of cases described in City of New Castle v. Genkingen, 37 Sup. 21 and Com. v. Antone, 22 Sup. 412 to which the Act was never applied.

2. Secondly, the case was instituted, tried and adjudged as a criminal case, a summary conviction. To fix this clearly we need only compare the statute, 19 P.S. 12.1, under which it was started with the statute, 53 P.S. 17082, which before the Superior Court's opinion controlled the institution of prosecutions. Criminal proceedings and summary convictions have never been affected by the Act of 1810. Com. v. Burkhart, 23 Pa. 521; Com. v. Beatty, 91 Sup. 37; Com. v. Nesbit, 34 Pa. 398; and in Com. v. Hanzlik, 400 Pa. 134; this Court reversed, finding no evidence that the defendant operated a nuisance in fact. Hanzlik was an ordinance violation case and shows that the distinction between civil and criminal proceedings existed at that time (1960).

3. Thirdly, the prohibition against review in the Act of 1810 does not apply to this case because the amount in controversy exceeded $100. The Act by its terms applied only to cases arising out of contract express or implied where the sum demanded did not exceed $100. Sec. I., Act of March 20, 1810, 42 P.S. 242. As petitioners show on page 15 of their brief, the amount here in controversy was $300. each for the defendants. The Superior Court adopted the erroneous statement of fact in Appellee's brief that the summons contained words limiting the penalty to be imposed to $100. The record, at page 8a, shows that the $100. fine was to be imposed for the separate and distinct offense of failing to appear in response to the summons. Any doubt on this point is removed by referring to the Act which created the procedure and prescribes the wording of the summons and the penalty for failing to appear, 19 P.S. 12.2. Since the Act limits itself to cases involving $100 or less, it cannot apply where the amount is greater. The prosecutor never suggested that the penalty be $100.or less. The appellee's argue that the city could have sought less than $300. Without decidin that point, we can decide this case on the fact that it did not.

4. Section 22 of the Act of March 20, 1810 was repealed by the Act of August 14, 1963; 17 P.S. 184.1.

The Superior Court begins its opinion by stating th the prohibition against review has been repealed. The Court the develops its concept of narrow certiorari, a mode of review heretofore limited to the Supreme Court. Petitioners, however, find nothing in the Act (17 P.S. 181) relating to narrow certiorari.

On the contrary, the Act gives authority for plenary review in such cases as are commited to the Superior Court, but the Superior Court has not become a Court of Kings Bench and, absent statutory authority to review, has none.

Petitioners believe that Sec. 22 of the Act of 1810 has been repealed and submit the following analysis:

Originially, any decision by a Court of record was fully reviewable.[1] In 1810 a certain class of cases were carved out of the full review statute and the decision of the Common Pleas thereon was to be final. This Act is called the Hundred Dollar Law because it provided themethods of service, trial and judgment for claims arising out of contract where the sum demanded did not exceed One Hundred Dollars. This Act is quite lengthy and contains two (2) dozen separate sections, most of which have been repealed. It seems reasonably clear that the legislative purpose of section 22 was to prevent the small private claim from becoming a source of extensive litigation.[2]

In 1895, the Superior Court was created and given jurisdiction over appeals from the Common Pleas whether originating in the Common Pleas or reaching that Court by appeal or certiorari from a Justice of the Peace, Alderman, or Magistrate.[3]

---

1. Act of May 22, 1722, 12 P.S. 1091. This Act provides for a Writ of Error to any person aggrieved as of course, returnable to the Supreme Court. The Act is still in force.

2. Act of March 20, 1810, P.L. 208. We note in passing that Section 4 of the Act required the summary officer to "state the kind of evidence upon which plaintiff's demand may be founded". P.L. 211. The application of this act to any case of imprisonment is upon extremely dubious construction.

3. Act of June 24, 1895, P.L. 212 Section 7(c) (P.L. 215)

This legislation would have reopened the door for appeals of $100 cases except that the Act also provided that the Superior Court should have "jurisdiction of all appeals now allowed to the Supreme Court". Since the Supreme Court at that time (1895) did not review $100 cases of contract, Section 22 remained in effect for its class of cases. In 1899, the jurisdiction of the Superior Court was broadened, but the legislature retained the "now allowed to the Supreme Court" section in-tact. The 1899 Act repeats the specific reference to cases arising before summary officers. There is no contradiction in this because only the $100 contract cases were affected by Section 22. Any other cases arising before a Magistrate was fully reviewable.[4]

The jurisdction of the Superior Court continued to be expanded by the legislature and the kinds of cases to be heard increased. In 1923, cases arising before "justices, alderman and magistrates" became cases arising in "some other court or tribunal". This broadened the Superior Court's scope to include review of administrative agency proceedings.[5]

The original reference to cases formerly reviewable by the Supreme Court was continuously retained throughout these otherwise expansive amendments. Consequently, the restictive provision of 1810 remained uncontested and the Superior Court had no power to review them either.

---

[4] Act of May 5, 1899 P.L. 248 Section (c)

[5] Act of March 2, 1923 P.L. 3 Section (c)

In 1941, however, a significant change was made. The legislature deleted the clause "which are now allowed to the Supreme Court".[6] The Act re-enacted Section 7a which provided for appeals from Common Pleas arising from some other court or tribunal. This Act ostensibly freed the Superior Court from the restrictions which had been on the Supreme Court in 1895 against review of $100 contract cases. The Act now says all appeals in all cases. The Act of 1941 had one shortcoming. Though inconsistent with the Act of 1810 Section 22, it contained no repealing clause, specific or general. The deletion of the reference to cases formerly appealable to the Supreme Court meant something, obviously, but without a repealer it was a difficult construction.

Finally, in 1963, the legislature in continuing to expand the review of the Superior Court amended Section (c) to read "all actions and proceedings in the courts of Common Pleas whether originating therein or from some other court or tribunal".[7] To resolve all doubts as to what the Court could hear, the Act of 1963, in Section 4, provides that all acts of parts of acts inconsistent with it are repealed.[8]

Petitioners believe that an Act providing for appeals of all actions which involve summary proceedings before "justices, alderman and magistrates" and an Act which prohibits review of such cases are inconsistent. We, therefore, conclude

---

6. Act of May 21, 1941 P.L. 47 Section 7 (see historical note 17 P.S. 184 in bound portion of Purdon's).

7. Act of August 14, 1963 P.L. 819, 17 P.S. 184 and 17 P.S. 184.1 specifically stating all actions which involve summary proceedings before "justices, alderman and magistrates".

8. The repealer clause is not recorded in Purdon's.

that Section 4 of the Act of 1963 repealed Section 22 of the Act of 1810.

The Superior Court thus should have completely reviewed the judgment of the Common Pleas and determined the correctness of its decision on each of the points presented to it by the exceptions. Had the Superior Court done so, it would properly have directed the Common Pleas to read its own record and apply the rule of autrefoi acquit. In addition, it should have declared against the Magistrate's jurisdiction on the record.

II. THE SUPERIOR COURT FAILED TO CONSIDER A SUBSTANTIAL FEDERAL QUESTION

The Court failed to consider the denial of due process inherent in a combined criminal and civil trial. In this regard, the Court says simply, "we do not deem nay of these irregularities prejudicial or not subject to correction". But none of petitioners' rights described on pages 8 and 9 of their brief (to be served, to file answers, preliminarily object, a jury trial, discovery, judgment on the pleadings and some certainty of method) have been restored or corrected.

The Superior Court speaks of a complaint, but there was no complaint. The Court speaks of suit being instituted, but suit has never been instituted and even appellee concedes the prosecution did not start in the "regular way", but by "sight arrest" four months after the event. The Court speaks of the charges being "severed", but finding a severance in a verdict of guilty is labeling a dead man "cured". And then, after a trial admittedly criminal in every aspect, to be denied review because it is "civil" is to put the crown of thorns firmly in place.

III. THE APPEAL CONTAINS SUBSTANTIAL QUESTIONS OF FIRST IMPRESSION IN THE COMMONWEALTH

"Nothing is settled until settled right". Many of the issues in this case are ones of first impression. If they are properly decided in this instance, the citizens of the Commonwealth will be the beneficiaries both of the just law and the certainty of its pronouncement. The issues are wide in scope and of general application. They will be repeatedly raised and are matters of public concern. The following appear to be problems upon which no Pennsylvania appellate court has heretofore spoken:

1. The no evidence problem.
2. The Act of 1810 vis-a-vis the Act of 1963.
3. The combining of civil and criminal prosecutions.
4. The jurisdiction of Magistrates to hear ordinance cases involving more than $100.

Petitioners believe that this court can and will decide these issues correctly and in so doing render their just deliverance from these unjust convictions.

Respectfully submitted,

WILLIAM LEE AKERS, ESQUIRE
HARRY LORE, ESQUIRE

92763

Gilbert Cantor
Mancill
Semans,
Hedges
#1300
2 Penn
Center
LO-3-2115

Carl Schneider
LO-3-8600

RE
2
4448

IN THE 6TH DISTRICT POLICE COURT

COMMONWEALTH C Pennsylvania

vs

FRANK HALEY
JAKE GILES
FLORENCE YVONNE JOHNSON
WALTER LIVELY
MARGARET ANN NEISSER
JOSEPH HARVEY
SUSAN MAYER
LILLIAN MIRMAK
JEROME DORTORT
GEOFFREY LOBENSTEIN
FREDERICK FELDMAN

MEMORANDUM ON BEHALF OF DEFENDANTS

INTRODUCTORY

In view of the importance of this case, which goes beyond the penalties that may be imposed on conviction of the defendants in a summary proceeding -

In view of the importance of this case not only to the individual defendants, but also the the Congress of Racial Equality (CORE), whose program of nonviolent direct action was implemented by the individual defendants in the series of events which gave rise to this case -

In view of the importance of this case not only to the individual defendants and to CORE, but also to the City of Philadelphia, many of whose citizens continue to exist in miserable dwellings unfit for human habitation, a condition which the CORE demonstration was designed to relieve -

This brief is filed in order to invite the attention of this tribunal to the factual, legal and Constitutional issues involved, for consideration prior to the conclusion of the case.

STATEMENT OF THE CASE

On Friday morning, September 20, 1963, the defendants, sit-in demonstrators of the Congress of Racial Equality (CORE) moved from the Redevelopment Authority's Relocation Bureau, 511 North Broad Street, to the City Hall office of Deputy Development Coordinator Richard Buford. The purpose of the sit-in was to protest the agency's slowness in relocating persons living in slum dwellings which had been condemned by the City as unfit for human habitation.

The police took up positions at Mr. Buford's office in the morning and the demonstration was observed throughout the day. There was no evidence of violence or threat of violence. There was no evidence of noise other than the testimony relating to singing by the demonstrators around the time of closing of Mr. Buford's office. The police testified that this was "loud and boisterous" singing, and the defendants maintain it was not. The evidence is in dispute as to whether the singing began shortly before or shortly after 5:00 P.M., the time of closing of Mr. Buford's office. The defendants assert with assurance that they began this singing at 5:02, the time when Mr. Buford emerged from the inner office to announce that his office was closed and that the demonstrators should leave. It is undisputed that the demonstrators stopped singing when requested to do so by Inspector Rizzo.

After the police read to the defendants, individually, statements advising them that they would be arrested if they did not leave the office, the defendants refused to leave and the police arrested them for "disorderly conduct."

ARGUMENT

A. The Singing:

1. "Loud and boisterous," as the police testified, is a highly subjective judgment. The prosecution produced not a single member of the "public" whose peace the singing allegedly disturbed.

2. The singing started only after working hours were over on Friday. The defendants testified that it began at 5:02 P.M. a time they had good reason to remember because Mr. Buford came out at that time to announce that the time of closing had arrived. Moreover, there was testimony that the defendants and Mr. Buford had had a conference which broke up shortly before 5:00 P.M. The testimony of the arresting officers as to the time of the singing was much less definite.

3. There was no evidence that any members of the public were annoyed by the singing. People may have been aware of it, but it has been held that an indispensable ingredient of the offense of disorderly conduct is public annoyance, and where it appeared that the public was not annoyed by a defendant's conduct, but rather diverted, a summary conviction was reversed on appeal. Com. v. Melchune, 21 Luz. 268 (1921).

4. The testimony of Inspector Rizzo confirmed that of defendant Dortort that when Inspector Rizzo asked the defendants to stop their singing they stopped. This shows a complete absence of any wish to disturb or other criminal intent. Would that we all had neighbors whose voices and entertainments were so responsive to our wishes!

5. All of the prosecution witnesses testified that the arrests were occasioned by the refusal of the defendants to

leave the room when warned that they would be arrested if they did not. The police testified very specifically that prior to the arrest they read to each defendant a statement advising that refusal to leave the office would result in arrest. The conclusion is inescapable that it was the defendants' refusal to leave, rather than their singing, which led to their arrest, and it may be inferred that the singing was not at the time considered to be a disturbance of the peace.

B. Refusal of the defendants to terminate the sit-in:

1. The question before this tribunal is not the wisdom of CORE's sit-ins, not their ultimate utility or effectiveness, or their social desireability, on which opinions may differ, but only whether the continuation of a sit-in, despite an order to leave, can be held to constitute a breach of the peace.

2. As there was testimony that the sit-in was conducted up to 5:00 P.M. with the agreement of Mr. Buford, who was in charge of the office, it must be inferred that the sit-in as conducted was not disruptive of the functions of that office.

3. As to the sit-in after 5:00 P.M., which occassioned the arrest, it could not have disturbed the functioning of Mr. Buford's office as Mr. Buford had announced the closing of his office. Moreover, to constitute disorderly conduct the acts complained of must involve some invasion of the quiet and peaceable enjoyment by the public of places dedicated to the use of the public. Com. v. Conlin, 1 D. & C. 2d 591 (1955). As no public enjoyment of Mr. Buford's office after 5:00 P.M. is ordinarily contemplated, there was no public enjoyment of it to disturb after 5:00 P.M. and the essence of the offense charged is therefore wanting. In this connection, we respectfully invite the

attention of this Court to Judge Reimel's Handbook on Criminal Law in Pennsylvania, particularly the sections on breach of the peace (p. 43) and disorderly conduct (pp. 86-87).

C. General:

The Supreme Court of Pennsylvania has recently provided a helpful analysis of the offense of breach of peace and disorderly conduct: Com. v. Greene, 410 Pa. 111, 189 A. 2d 141 (1963). In that case the Court enunciated the following guide lines, under which the instant case may be disposed of:

1. A noise, if it is to constitute disorderly conduct must be not only loud and boisterous but also unseemly. "Something is unseemly when it is not fitting or proper in respect to the conventional standards of organized society or a legally constituted community." (189 A 2d. at p. 143). Surely the singing of spirituals and freedom songs, after the close of business, by a disciplined organization engaged in a sit-in as a recognized and now customary phase of the Negro freedom movement cannot be regarded as "unseemly."

2. In order to be evaluated as disorderly conduct, what the accused does or directs "must produce loud, boisterous and unseemly noise or disturbance and his actions must be of such a character that the public peace is unjustifiably broken or disturbed, or the traveling public annoyed." (189 A 2d. at p. 144). Emphasis ours.

3. "The cardinal feature of the crime of disorderly conduct is public unruliness which can or does lead to tumult and disorder." (189 A 2d. at p. 144)

4. "The law properly frowns upon the use of the criminal courts for the application of civil remedies. The

branding of any individual with the stigma of crime for a civil fault, if there be one, is an act to be reprobated and condemned. Whether it be for the collection of a debt or the discontinuance of a practice disturbing to the complainer, the latter may not threaten the object of his dissatisfaction with a prison cell in order to collect money allegedly due him or to redress a supposed civil grievance." (189 A 2d. at p. 145). Thus, whatever the results might be in a civil action brought to obtain possession of Mr. Buford's office on the evening in question, it is clear that the use of criminal process to terminate the sit-in is improper.

5. "The crime of disorderly conduct is not intended as a catchall for every act which annoys or disturbs people; it is not to be used as a dragnet for all the irritations which breed in the ferment of a community."

Furthermore, if the courts of Pennsylvania were to hold that the defendants in this case could be found guilty of disorderly conduct, such a holding would be in violation of the Constitution of the United States, under the holding of the Supreme Court of the United States in Edwards v. South Carolina, 372 U.S. 229, 83 S. Ct. 680 (1963).

In the Edwards case, 187 persons were convicted in a magistrate's court in Columbia, South Carolina, of breach of the peace. These persons had walked in groups of about 15 to the South Carolina State House grounds to submit a protest against conditions with which they were dissatisfied. They paraded around with signs and a crowd of 200 to 300 onlookers gathered. There was no violence and no person or vehicle was prevented from entering or leaving the area. The police advised the defendants that they would be arrested if they did not disperse within 15 minutes. Instead of dispersing, the defendants engaged in "boisterous," "loud" and "flamboyant" conduct, including speeches, singing, stamping and clapping. They were arrested and convicted as mentioned above.

The Court held that "in arresting, convicting, and punishing the petitioners under the circumstances disclosed by this record, South Carolina infringed the petitioners' constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances .... The circumstances of this case reflect an exercise of these basic constitutional rights in their most pristine and classic form." (83 S. Ct. at p. 683).

And further: "The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views." (p. 684) And the Court quotes Chief Justice Hughes in Stromberg v. California: "'The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. 'A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment...'" (p. 685)

The problem in South Carolina and Alabama, of course, and in the States of like persuasion, is that the Constitution of the United States is not regularly in force there. The difference between Alabama and this Commonwealth is not always a difference in the hearts or in the behavior of their private citizens, but rather the difference lies and must continue to lie in the fact that every part of the Constitution of the United States is in force in every court of this State regardless of the preferences of individual judges and regardless of the transient impulses of the community.

CONCLUSION

The conduct of the defendants in this case cannot be divorced from the context in which it arose.

If anything is clear, it is that the CORE demonstrators, here and throughout this land, are not disturbing the public peace; they are disturbing the public conscience, which is a far more difficult and wonderful thing. And the discomfort felt by City officials is not the disturbance of order but the prick of truth.

The demonstrators are citizens exercising their constitutional right to assemble peaceably and petition for a redress of grievances. They are saying to the City officials and to the public, there are people in our City who are living in habitations fit only for animals, and attention must be paid.

Should it be assumed that the Redevelopment Authority will do its job of relocating the Hawthorne evacuees with due dispatch? CORE and the Hawthorne residents have no reason and no right to make such assumptions. Was the City able to discover that the Hawthorne homes were unfit for human habitation before CORE by its demonstrations prodded the City officials into Hawthorne and gave them eyes with which to see? Again and again the City has refused to act until CORE has turned upon it the searchlight of public exposure.

citizens, but rather the difference lies and must continue to lie in the fact that every part of the Constitution of the United States is in force in every court of this State regardless of the preferences of individual judges and regardless of the transient impulses of the community.

CONCLUSION

The conduct of the defendants in this case cannot be divorced from the context in which it arose.

If anything is clear, it is that the CORE demonstrators, here and throughout this land, are not disturbing the public peace; they are disturbing the public conscience, which is a far more difficult and wonderful thing. And the discomfort felt by City officials is not the disturbance of order but the prick of truth.

The demonstrators are citizens exercising their constitutional right to assemble peaceably and petition for a redress of grievances. They are saying to the City officials and to the public, there are people in our City who are living in habitations fit only for animals, and attention must be paid.

Should it be assumed that the Redevelopment Authority will do its job of relocating the Hawthorne evacuees with due dispatch? CORE and the Hawthorne residents have no reason and no right to make such assumptions. Was the City able to discover that the Hawthorne homes were unfit for human habitation before CORE by its demonstrations prodded the City officials into Hawthorne and gave them eyes with which to see? Again and again the City has refused to act until CORE has turned upon it the searchlight of public exposure.

There is a peace and order which differs from the kind of peace and order the defendants are charged with disturbing. And that is the peace and order which hang like a heavy curtain to shield our eyes from the things around us that we prefer not to behold. The name of that peace and order is Complacency, and its other name is Disregard. Let there be an end, these demonstrators are saying, to Complacency and to Disregard.

The CORE sit-in was not designed to prevent Mr. Buford from doing the business of his office; on the contrary, it was to insist that he do it. The laws affecting the public peace were not enacted to shield a reluctant government from the voice of the people. The City ought to be ashamed that we are here today. The responsible officials ought to be ashamed of availing themselves of these charges and this tribunal in an effort to suppress the earnest protest and proper entreaties of the people they are supposed to serve.

The City, confronted with a protest which refused to be dismissed, left the matter to the police. The police performed in the customary manner what they doubtless understood to be their duty in the circumstances. The result, however, is that the Court is asked to find the defendants guilty where (1) there is no evidence of conduct amounting to disorderly conduct under the law and (2) the extension of the law to cover this situation would deprive the defendants of their Constitutional rights.

We urge that the situation be corrected, in the interest of democracy, justice, and the rule of law, by dismissal of the charges against all the defendants.

Respectfully submitted,

William Lee Akers

Harry Lore

Gilbert M. Cantor

WILLIAM LEE AKERS
ATTORNEY AT LAW

LOCUST 8-1670

SUITE 805
ONE EAST PENN SQUARE
PHILADELPHIA 7, PENNSYLVANIA

April 27, 1965

APR 28 REC'D

Carl Rachlin, Esquire
165 West 46th Street
New York, New York

Re: Pennsylvania v. 10 Members Phila. Core

Dear Carl:

Enclosed please find our Petition for a special appeal to the Supreme Court of Pennsylvania. These appeals are allowed infrequently, about two a year. If it should be allowed, we will need the money to follow through. I estimate it will cost about $350.

If it is not allowed, only the United States Supreme Court is available.

Very truly yours,

William Lee Akers

William Lee Akers

WLA/nk

Enclosure

No. 572 October Term, 1964

Commonwealth v. Dortort et al., Appellants.

(Amended to City of Philadelphia)

OPINION BY MONTGOMERY, J.:

This is an appeal from an order of Common Pleas Court No. 2 of Philadelphia County dismissing exceptions to a magistrate's return brought before the court on certiorari. The City of Philadelphia, appellee, has moved to dismiss it for the reasons that the Act of March 20, 1810, P. L. 208, 5 Sm. L. 161, §22, 42 P.S. §957, declares that the judgment of the Court of Common Pleas is final and unappealable in such cases, and Bell Appeal, 396 Pa. 592, 152 A. 2d 731 (1959), held that the Superior Court has no right of review by certiorari. We are of the opinion that such right was subsequently given to this Court by the Act of August 14, 1963, P. L. 401, §1, 17 P.S. §184-184.1(pp), which we think was passed to overcome the effect of Bell Appeal. Therefore, the motion to dismiss will be denied.

Since the Act of 1810 aforesaid denied the right of appeal, our right of review must be on the basis of "narrow" certiorari, *Kaufman Construction Company v. Holcomb*, 357 Pa. 514, 55 A. 2d 534 (1947), and our inquiry will be limited to a determination of whether the lower court had jurisdiction, whether the proceedings were regular, whether the lower court exceeded its power and authority, and whether there was a violation of constitutional rights. *Badali v. Hartman*, 410 Pa. 652, 190 A. 2d 301 (1963). We are limited to a review of the record and may not properly consider matters dehors the record. *Badali v. Hartman*, supra; *Roming v. Shivers*, 156 Pa. Superior Ct. 205, 39 A. 2d 786 (1944).

This action was begun by the filing of a complaint with the magistrate by the Deputy Police Commissioner of the City of Philadelphia and by the issuance of a summons in the name of the Commonwealth of Pennsylvania.

In the complaint appellants were charged with the common law indictable offense of breach of the peace,[1] and also that they on September 20, 1963, "did in violation of Chapter 10-500, Section 10-501(2)(h) of the Philadelphia Code of General Ordinances use a City facility, namely; the office of the Development Coordinator, Room 210, City Hall, Philadelphia, Pennsylvania, and entered into said City property, and remained therein, without authority, and refusing to leave the same when lawfully requested so to do. . . ."

---

[1] Criminal actions may be commenced in the City of Philadelphia in the same maner as heretofore, without issuing warrants of arrest, under the Act of September 18, 1961, P. L. 1464, §1, 19 P.S. §12.1.

After a hearing which the appellants attended the magistrate discharged appellants from the breach of the peace charge; but he found them guilty of violating the ordinance and imposed on each of them a fine of $50 and costs. Appellants did not appeal from these judgments but they petitioned the Common Pleas Court for a writ of certiorari to bring up the magistrate's record. After having permitted the proceedings to be amended by substituting the City of Philadelphia for the Commonwealth of Pennsylvania as the complainant because the criminal offense had been dismissed and only the violation of the ordinance remained, the lower court dismissed the exceptions to the return of the magistrate. In *Pleasant Hills Borough v. Carroll,* 182 Pa. Superior Ct. 102, 125 A. 2d 466 (1956), we allowed a similar amendment. Also see *Commonwealth v. Ashenfelder,* 413 Pa. 517, 198 A. 2d 514 (1964).

Although the present action was instituted in the name of the Commonwealth of Pennsylvania and was at first coupled with a criminal charge, those irregularities in the initial proceedings do not alter the fact that now we are dealing with a penalty for violating a municipal ordinance, which is a civil action and is not a summary conviction or a criminal offense. *Commonwealth v. Ashenfelder,* supra; *York v. Baynes,* 188 Pa. Superior Ct. 581, 149 A. 2d 681 (1959).

On examining the record we find that the lower court had jurisdiction under art. 5, §10, of the Constitution of the Commonwealth of Pennsylvania of 1874 to review the magistrate's record on a writ of certiorari; and since the judgment of the Court of Common Pleas is final under the Act of 1810 aforesaid, it is not subject to review by this Court, even though the magistrate lacked jurisdiction. *Perroni v. Thornberry,* 173 Pa. Superior Ct. 647, 98 A. 2d 641 (1953). However, the magistrate had jurisdiction generally to hear and determine civil actions for penalties prescribed for the violation of ordinances, Act of June 15, 1937, P. L. 1743, No. 368, §2, 42 P.S. §1102, and there is nothing to support the argument of the appellants that the penalty was beyond his jurisdiction. The ordinance is dehors the record but the summons states that the fine to be levied is not in excess of $100, which is the limit imposed by art. 5, §12, of the Constitution of the Commonwealth of Pennsylvania and by the Act of 1937, supra.

The proceedings were regular except as previously noted and except that the complainants were represented by the district attorney rather than by the city solicitor. It was proper for the district attorney to represent the Commonwealth in prosecuting the indictable offense. However, we do not deem any of these irregularities prejudicial or not subject to correction. The City was substituted for the Commonwealth; the city solicitor, for the district attorney. The criminal charge was dismissed and thus severed from the civil charge. The suit was instituted in the regular way by complaint and the appellants were served properly by summons. They appeared and could have testified had they desired to do so. By appearing and going to trial without objection, appellants waived any question of service or jurisdiction of their persons. *Weidenhamer v. Bertle,* 103 Pa. 448 (1883); *Sweitzer v. Emert,* 55 Pa. Superior Ct. 176 (1913).

Appellants are attempting to have us review the merits of this case by arguing that there is no evidence or findings of fact in the magistrate's return. It is beyond our power to review the case on this basis. Their effort is not uncommon. We adopt the statement of Mr. Chief Justice SHARSWOOD in Carpenter's Appeal, 11 W.N.C. 162 (1882), which was quoted by Mr. Chief Justice FRAZER in Rimer's Contested Election. Geary's Appeal, 316 Pa. 342, 347, 175 A. 544, 546 (1934): ". . . upon a common law certiorari, as this is, we can only examine the record, to see if the Court had jurisdiction and the proceedings were regular. This has been so often decided, that it is to be hoped that some time or other parties will leave off bringing such cases into this Court, with the idea that they may get the proceedings reversed on the merits."

Finally, appellants complain of a lack of due process required by the Fourteenth Amendment to the Constitution of the United States. There is no merit in this complaint. The action was properly instituted by complaint and summons. Appellants were properly served. By appearing at the hearing without objection they waived any irregularities in the manner that jurisdiction was acquired over their persons. They were given the opportunity to testify and had the right of appeal from the judgments entered against them. Although the evidence on which the judgments were based is not part of the record, the record clearly shows that testimony was given at the hearing. By asserting a failure to recognize an alleged plea of previous acquittal, appellants are endeavoring to have this matter decided on the merits again. We previously discussed and denied their right to do so.

Since we find no lack of jurisdiction, no irregularities in the proceedings that have not been corrected, and no abuse of power and authority by the lower court or denial of any of appellants' constitutional rights, the order is affirmed.

Piccadilly Cafeterias (Waco, Texas) vs CORE

Society of Wisconsin

Please Retain Original Order

Serve
Clarence
Broadway
3110 Hatcher

FORM NO. 353-4 — CITATION

THE STATE OF TEXAS

TO Defendants, DALLAS COORDINATING COMMITTEE OF FULL CIVIL RIGHTS THE CONGRESS OF RACIAL EQUALITY, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND THE BLACK MUSLIMS

You The Said Defendants are hereby commanded to appear by filing a written answer to the plaintiff's petition at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 101st Judicial District Court of Texas, at the Courthouse in the City of Dallas, Dallas County, Texas, said plaintiff being

PICCADILLY CAFETERIAS OF WACO, INC., A TEXAS CORP.

Filed in said Court on the 2nd day of June 19 64 against DALLAS COORDINATING COMMITTEE OF FULL CIVIL RIGHTS, THE CONGRESS OF RACIAL EQUALITY, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND THE BLACK MUSLIMS

For suit, said suit being numbered 87858-E, the nature of which demand is as follows:

SUIT ON INJUNCTION, ETC.

as shown on said petition, a copy of which accompanies this citation.

If this citation is not served within 90 days after date of its issuance, it shall be returned unexecuted.

WITNESS: BILL SHAW, Clerk of the District Courts of Dallas County, Texas.

Given under my hand and the Seal of said Court at office this the 2nd day of June 19 64.

ATTEST: BILL SHAW
Clerk of the District Courts of Dallas County, Texas

By Janice Skelton Deputy
Janice Skelton

CITATION

COPY OF CITATION DELIVERED TO YOU ON THE 3 DAY June
BILL DECKER
Dallas County

No. 87858-E

PICCADILLY CAFETERIAS OF WACO, INC., A TEXAS CORPORATION

vs.

DALLAS COORDINATING COMMITTEE OF FULL CIVIL RIGHTS, ET AL

ISSUED

This 2nd day of June 19 64

BILL SHAW,
Clerk, District Courts,
Dallas County, Texas.

By Janice Skelton Deputy

L. W. ANDERSON
601 Corrigan Tower
Dallas, Texas
RI 1-5294

Atty for Plaintiff

Address

Phone No.

Form 322—TEMPORARY RESTRAINING ORDER

THE STATE OF TEXAS

TO DALLAS COORDINATING COMMITTEE OF FULL CIVIL RIGHTS, THE CONGRESS OF RACIAL EQUALITY, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AND THE BLACK MUSLIMS,

WHEREAS, in a certain suit pending in the District Court of the 101st Judicial District of Texas, wherein

PICCADILLY CAFETERIAS OF WACO, INC.

Plaintiff and

DALLAS COORDINATING COMMITTEE OF FULL CIVIL RIGHTS, THE CONGRESS OF RACIAL EQUALITY, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, THE BLACK MUSLIMS

Defendant, the said PICCADILLY CAFETERIAS OF WACO, INC.

prayed for and obtained from the Hon. DALLAS A. BLANKENSHIP

Judge of the 101st Judicial District, his most gracious TEMPORARY RESTRAINING ORDER and the said

Piccadilly Cafeterias of Waco, Inc.

having given bond, as required by the fiat of the judge of the 101st Judicial District Court.

Now, Therefore, you, the said DALLAS COORDINATING COMMITTEE OF FULL CIVIL RIGHTS, THE CONGRESS OF RACIAL EQUALITY, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AND THE BLACK MUSLIMS

your Counselors, Solicitors, Attorneys, Agents, Servants and employees are hereby commanded to DESIST and REFRAIN from interfering with Plaintiff's business and further, they are enjoined and restrained from coming within fifty (50) feet of the premises occupied by the Plaintiff, and from coming upon the premises occupied by the plaintiff at 1503 Commerce Street in Dallas, Dallas County, Texas, and harassing the plaintiff's customers.

You are further ordered to appearand show cause in this court why said injunction and restraining order should not be made permanent.

until the further order of the District Court to be holden within and for the County of Dallas Judicial District of Texas at the Courthouse thereof, in the City of Dallas, at 9:00 am June 11th A. D. 1964, when and where this writ is returnable.

HEREIN FAIL NOT, under the penalty of the law.

WITNESS: BILL SHAW, Clerk of the District Courts of Dallas County, Texas.

Given under my hand and the seal of said Court, at office in the City of Dallas, this 2nd day of June A. D. 1964

Attest: BILL SHAW,
Clerk District Courts, Dallas County, Texas.

By Janice Shelton
Janice Shelton Deputy.

FILED
1964 JUN -2 AM 9:39
BILL SHAW
DIST. CLERK
DALLAS COUNTY, TEXAS
DEPUTY

IN THE DISTRICT COURT OF DALLAS COUNTY
IN AND FOR THE ____ JUDICIAL DISTRICT
OF TEXAS

PICCADILLY CAFETERIAS OF WACO, INC.,
A TEXAS CORPORATION,
PLAINTIFF

V.

DALLAS COORDINATING COMMITTEE OF FULL
CIVIL RIGHTS, ET AL,
DEFENDANTS

NO. 87858-E

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the plaintiff, Piccadilly Cafeterias of Waco, Inc., a Texas Corporation, complaining of the defendants, Dallas Coordinating Committee of Full Civil Rights, the Congress of Racial Equality, the National Association for the Advancement of Colored People, and the Black Muslims, and for cause of action would respectfully show unto the Court as follows:

I.

That the plaintiff is a Texas corporation, and has its principal place of business and office in Waco, McLennan County, Texas, but has a place of business also located at 1503 Commerce Street in Dallas, Dallas County, Texas; that the defendant, Dallas Coordinating Committee of Full Civil Rights is a committee whose members consist of organizations from the Congress of Racial Equality, the National Association for the Advancement of Colored People, and the Black Muslims, and has as its officers and agents for service the Reverend Earl E. Allen, whose office is at the Highland Hills Methodist Church located at 6006 Flagstaff in Dallas, Dallas County, Texas, where service of process may be had upon him; Clarence Broadnax, who resides at 3110 Hatcher Street in Dallas, Dallas County, Texas, where service of process may be had upon him; Ted Armstrong, alias Egbert Adams, whose office is located at Bishop College, 3937 Simpson, Dallas, Dallas County, Texas, where service of process may be had upon him;

and William E. X., alias William E. Adams, Pastor of the Muhammad's Mosque of Islam, whose office is at 2526-1/2 Flora Street in Dallas, Dallas County, Texas, where service of process may be had upon him.

II.

The plaintiff alleges that as a private corporation, it conducts business at 1503 Commerce Street in Dallas, Dallas County, Texas, and as a private business enterprise is engaged in the restaurant business and the service of food and beverages. That as a private business enterprise, it has a right to choose and determine what customers it desires to serve and do business with.

III.

That on or about the 30th day of May, 1964, the defendants and their members attempted to enter upon the plaintiff's premises at 1503 Commerce Street in Dallas, Texas, and upon being refused entrance thereto made a violent disturbance by singing and reclining on the floor and caused the plaintiff's customers unnecessary harassment and blocked the entrance way into plaintiff's place of business so it could not conduct service to its customers. That also on May 31, 1964, and on June 1, 1964, the defendants and their members engaged in similar activities and especially blocked the entrance and made a disturbance upon the sidewalk adjacent to the plaintiff's place of business. That by reason of the wrongful acts of the defendants in trespassing upon plaintiff's premises, harassing plaintiff's customers and making disturbances to plaintiff's place of business the plaintiff has been damaged by loss of business in the total amount of One Thousand Dollars ($1,000.00) to date.

IV.

That by reason of the actions of the defendant, Dallas Coordinating Committee of Full Civil Rights, and its members, and the members of said organizations, the plaintiff will continue to suffer irreparable damage and harm in the future unless this Honorable Court issue an injunction restraining the defendant and its members, and the members of said Organizations of the said defendants from interfering with plaintiff's business and coming upon the premises occupied by the plaintiff and harassing the plaintiff's customers. That in this connection the plaintiff would show that it has no adequate remedy at law.

WHEREFORE, plaintiff prays that defendants be cited to appear and answer this Petition, and that a Writ of Injunction issue restraining the defendants, and their members, or any members of said organizations which are members of the defendant, Dallas Coordinating Committee of Full Civil Rights, from interfering with plaintiff's business, and further to restrain the said defendants from coming within fifty (50) feet of the premises occupied by the plaintiff, and from coming upon the premises occupied by the plaintiff and harassing the plaintiff's customers, and that it recover its damages in the amount of One Thousand Dollars ($1,000.00), and have such other and further relief as the Court may deem proper to grant, with costs of suit.

L. W. Anderson

L. W. Anderson
601 Corrigan Tower
Dallas, Texas 75201 (RI-1-5294)
Attorney for Plaintiff
Piccadilly Cafeterias of Waco., Inc.,
a Texas Corporation

COUNTY OF DALLAS)
)
STATE OF TEXAS)

BEFORE ME, the undersigned authority, on this day personally appeared James Ramig, as agent for the Piccadilly Cafeterias of Waco, Inc., a Texas corporation, to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who, being first duly sworn on oath says that he has read the foregoing petition, designed to be used in the cause of "Piccadilly Cafeteries of Waco, Inc., a Texas Corporation v. Dallas Coordinating Committee of Full Civil Rights, et al." in the District Court of Dallas County, Texas, and knows the contents of such petition, and that such petition and every statement and allegation thereof are true and correct.

James Ramig
James Ramig

SUBSCRIBED AND SWORN TO before me by the said JAMES RAMIG, this the 2 day of June, A.D., 1964, to certify which witness my hand and seal of office.

Mamie Pritz
Notary Public, Dallas County, Texas

MAMIE PRITZ

My Commission Expires
June 1, 1965.

* * * * * * * * * *

FIAT

ON THIS the ___ day of June, A.D., 1964, came on to be heard the application and petition of the plaintiff, Piccadilly Cafeterias of Waco, Inc., a Texas corporation, requesting that injunction and restraining order be issued against the defendants, Dallas Coordinating Committee of Full Civil Rights, the Congress of Racial Equality, the National Association for the Advancement of Colored People, and the Black Muslims, and any members of said defendant organizations, and it appearing to the Court that by reason of the actions of the defendants and their members and the members of said organizations in coming about the premises of the plaintiff and interfering with plaintiff's business and harassing plaintiff's customers, that irreparable injury, loss and damage will result to plaintiff unless the defendants and their members and the members of the organizations thereof are restrained from coming about the premises of the plaintiff located at 1503 Commerce Street in Dallas, Dallas County, Texas;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendants, Dallas Coordinating Committee of Full Civil Rights, the Congress of Racial Equality, the National Association for the Advancement of Colored People, and the Black Muslims, and their members, or any members of said organizations which are members of the defendant, Dallas Coordinating Committee of Full Civil Rights, are hereby enjoined and restrained from interfering with plaintiff's business, and further, they are enjoined and restrained from coming within fifty (50) feet of the premises occupied by the plaintiff, and from coming upon the premises occupied by the plaintiff at 1503 Commerce Street in Dallas Dallas County, Texas, and harassing the plaintiff's customers.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the temporary restraining order and injunction heretofore ordered shall be issued immediately upon the plaintiff's posting a good and sufficient bond in the sum of One Thousand Dollars ($1,000.00);

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this injunction and restraining order shall remain in force and effect until a hearing is had hereon, and the same is hereby set for hearing on the _____ day of _______________, A.D., 1964, at ____________ o'clock ___.M. to show cause why said injunction and restraining order should not be made permanent.

The Clerk of this Court shall issue proper writs and notices in conformity herewith.

At Chambers at Dallas, Dallas County, Texas, this _____ day of ____________, A.D., 1964, at __________o'clock ___.M.

____
District Judge

PLAINTIFF'S PETITION FOR DAMAGES AND INJUNCTION

NOTICE TO SHOW CAUSE D.C. Form 375.

No. 87858-E

SUIT PENDING IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS

PICCADILLY CAFETERIAS OF WACO, INC
A TEXAS CORPORATION

vs.

DALLAS COORDINATING COMMITTEE OF FULL
CIVIL RIGHTS, ET AL

THE STATE OF TEXAS

TO: REVEREND EARL E. ALLEN, CLARENCE BROADNAX, TED ARMSTRONG, ALIAS EGBERT ADMAS, WILLIAM E. X., ALIAS WILLIAM E. ADAMS, WILLIAM H. SANDERS, FREDERICK CHARLES SCHULZE, MOYA SCHULZE, JOEL LEE RILEY, LEO FRANKLIN YOUNG, TOMMY LEE RANDEL, DONALD L. JONES, ROY EUGENE ALLEN, KATIE FRANCES PETERS, JOHN B. WILSON, JR., AND HIS MINOR DAUGHTER, MARY CLARA WILSON,

To:

YOU ARE HEREBY COMMANDED TO BE AND APPEAR BEFORE THE HONORABLE JUDGE OF THE 101st JUDICIAL DISTRICT COURT OF TEXAS, at the Courthouse in Dallas, Texas, on June 11th A. D. 19 64 at 9:00 o'clock A. M., THEN AND THERE TO SHOW CAUSE, if any, WHY said injunction and restraining order should not be made permanent.

Herein Fail Not, but of this writ, and how you have executed the same, make due return.

WITNESS: BILL SHAW. Clerk of the District Courts of Dallas County, Texas.

Given under my hand and seal of office, at Dallas, this the 4th day of June A. D. 19 64.

Attest: BILL SHAW.
Clerk, District Courts, Dallas County, Texas.

By Janice Skelton Deputy.
Janice Skelton

IN THE DISTRICT COURT OF DALLAS COUNTY
IN AND FOR THE 101ST JUDICIAL DISTRICT
OF TEXAS

FILED
JUN 4 11 33 AM '64
BILL SHAW
DIST. CLERK
DALLAS CO. TEXAS
DEPUTY ______________

PICCADILLY CAFETERIAS OF WACO, INC.,
A TEXAS CORPORATION,
PLAINTIFF

V. NO. 87858-C

DALLAS COORDINATING COMMITTEE OF FULL
CIVIL RIGHTS, ET AL,
DEFENDANTS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the plaintiff, Piccadilly Cafeterias of Waco, Inc., a Texas corporation, and files herein its First Amended Petition for Damages and Injunction, complaining of the defendants, Dallas Coordinating Committee of Full Civil Rights, the Congress of Racial Equality, the National Association for the Advancement of Colored People, the Black Muslims, the Reverend Earl E. Allen, Clarence Broadnax, Ted Armstrong, alias Egbert Adams, William E. X., alias William E. Adams, William H. Sanders, Frederick Charles Schulze, Moya Schulze, Joel Lee Riley, Leo Franklin Young, Tommy Lee Randel, Donald L. Jones, Roy Eugene Allen, Katie Frances Peters, John B. Wilson, Jr., and his minor daughter, Mary Clare ____________ Wilson, and for cause of action would respectfully show unto the Court as follows:

I.

That the plaintiff is a Texas corporation, and has its principal place of business and office in Waco, McLennan County, Texas, but has a place of business also located at 1503 Commerce Street in Dallas, Dallas County, Texas; that the defendants are all residents of Dallas County, Texas.

II.

The plaintiff alleges that as a private corporation, it conducts business at 1503 Commerce Street in Dallas, Dallas County, Texas, and as a private business enterprise is engaged in the restaurant business and the service of food and beverages. That as a private business enterprise, it has a right to choose and determine what customers it desires to serve and do business with.

III.

That on or about the 30th day of May, A.D., 1964, the defendants and their members attempted to enter upon the plaintiff's premises at 1503 Commerce Street in Dallas, Dallas County, Texas, and upon being refused entrance thereto made a violent disturbance by singing and reclining on the floor and caused the plaintiff's customers unnecessary harassment and blocked the entrance way into plaintiff's place of business so it could not conduct service to its customers. That also on May 31, 1964, June 1, 1964, June 2, 1964, and June 3, 1964, the defendants and their members of said organizations, and the individual defendants, engaged in similar activities and especially blocked the entrance and made a disturbance upon the sidewalk adjacent to the plaintiff's place of business. That by reason of the wrongful acts of the defendants in trespassing upon plaintiff's premises, harassing plaintiff's customers and making disturbances to plaintiff's place of business the plaintiff has been damaged by loss of business in the total amount of One Thousand Dollars ($1,000.00) to date.

IV.

That by reason of the actions of the defendant, Dallas Coordinating Committee of Full Civil Rights, and its members, and the members of said organizations, and the other individual defendants, the plaintiff will continue to suffer irreparable damage and harm in the future unless this Honorable Court issue an injunction restraining the defendant and its members and the members of said organizations of the said defendants and the other individual defendants from interfering with plaintiff's business and coming upon the premises occupied by the plaintiff and harassing the plaintiff's customers. That in this connection the plaintiff would show that it has no adequate remedy at law.

V.

That the actions of the defendants, and each of them, constituted a viation of Ordinances Number 10046 and Number 8737 of the City of Dallas, Texas, and the same are incorporated herein by reference thereto.

WHEREFORE, plaintiff prays that defendants be cited to appear and answer this Petition, and that a Writ of Injunction issue restraining the defendants, and their members, or any members of said organizations which are members of the defendant, Dallas Coordinating Committee of Full Civil Rights, and the other individual defendants, from interfering with plaintiff's business, and further to restrain the said defendants from coming within fifty (50) feet of the premises occupied by the plaintiff, and from coming upon the premises occupied by the plaintiff and harassing the plaintiff's customers, and that it recover its damages in the amount of One Thousand Dollars ($1,000.00) and that it have such other and further relief as the Court may deem proper to grant, with costs of suit.

L. W. Anderson
601 Corrigan Tower
Dallas, Texas 75201 (RI-1-5294)
Attorney for Plaintiff
Piccadilly Cafeterias of Waco,
Inc., a Texas Corporation

STATE OF TEXAS)
)
COUNTY OF DALLAS)

BEFORE ME, the undersigned authority, on this day personally appeared JAMES RAMIG, as agent for the Piccadilly Cafeterias of Waco, Inc., a Texas corporation, to me well known to be a credible person of lawful age and qualified in all respects to make this affidavit, who, being first duly sworn on oath, says that he has read the foregoing First Amended Petition for Damages and Injunction, designed to be used in the cause of "Piccadilly Cafeterias of Waco, Inc., a Texas corporation v. Dallas Coordinating Committee of Full Civil Rights, et al," in the District Court of Dallas County.

Texas, and knows the contents of such petition, and that such petition and every statement and allegation thereof are true and correct.

James Ramig
James Ramig

SUBSCRIBED AND SWORN TO before me by the said James Ramig, this 4 day of June, A.D., 1964, to certify which witness my hand and seal of office.

Mamie Pritz
Notary Public, Dallas County, Texas
MAMIE PRITZ

My Commission Expires
June 1, 1965.

****

AMENDED FIAT

ON THIS the _____ day of June, A.D., 1964, came on to be heard the sworn application and petition of the plaintiff, Piccadilly Cafeterias, Inc., of Waco, Inc., a Texas corporation, being Plaintiff's First Amended Petition for Damages and Injunction, requesting that injunction and restraining order be issued against the defendants, Dallas Coordinating Committee of Full Civil Rights, the Congress of Racial Equality, the National Association for the Advancement of Colored People, and the Black Muslims, and any members of said defendant organizations, and the Reverend Earl E. Allen, Clarence Broadnax, Ted Armstrong, alias Egbert Adams, William E. X., alias William E. Adams, William H. Sanders, Frederick Charles Schulze, Moya Schulze, Joel Lee Riley, Leo Franklin Young, Tommy Lee Randel, Donald L. Jones, Roy Eugene Allen, Katie Frances Peters, John B. Wilson, Jr., and his minor daughter, Mary Clare ____________ Wilson, and it appearing to the Court that by reason of the actions of the defendants, and their members and the members of said organizations, and the other individual defendants, in coming about the premises of the plaintiff and interfering with plaintiff's business and harassing plaintiff's customers, that irreparable injury, loss and damage will result to plaintiff unless the defendants and their members and the members of the organizations thereof and the individual defendants are restrained from coming about the premises of the plaintiff located at 1503 Commerce Street in Dallas, Dallas County, Texas, and within fifty (50) feet of the entrance of said premises.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendants, Dallas Coordinating Committee of Full Civil Rights, the Congress of Racial Equality, the National Association for the Advancement of Colored People, and the Black Muslims, and their members, or any members of said organizations which ammembers of the defendants, Dallas Coordinating Committee of Full Civil Rights, and the Reverend Earl E. Allen, Clarence Broadnax, Ted Armstrong, alias Egbert Adams, William E. X., alias William E. Adams, William H. Sanders, Frederick Charles Schulze, Moya Schulze, Joel Lee Riley, Leo Franklin Young, Tommy Lee Randel, Donald L. Jones, Roy Eugene Allen, Katie Frances Peters, John B. Wilson, Jr., and his minor daughter, ____________ Mary Clara ____________ Wilson, are hereby enjoined and restrained from interfering with plaintiff's business, and further, they are enjoined and restrained from coming within fifty (50) feet of the premises occupied by the plaintiff, and from coming upon the premises occupied by the plaintiff at 1503 Commerce Street in Dallas, Dallas County, Texas, and harassing the plaintiff's customers.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the temporary restraining order and injunction heretofore ordered shall be issued immediately as the plaintiff has already posted a good and sufficient bond in the sum of One Thousand Dollars ($1,000.00);

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this injunction and restraining order shall remain in force and effect until a hearing is had hereon, and the same is hereby set for hearing on the 11th day of June, A.D., 1964, at 9:00 o'clock A.M. to show cause why said injunction and restraining order should not be made permanent.

The Clerk of this Court shall issue proper writs and notices in conformity herewith.

At Chambers at Dallas, Dallas County, Texas this 4th dayof June, A.D., 1964, at 11:30 o'clock A.M.

/s/ Dallas A. Blankenship
District Judge

Nat'l
Bar
Directory

LAW OFFICES
WILSON & MENAKER
DALLAS, TEXAS
2606 Fidelity Union Tower

John B. Wilson, Jr.
Marvin Menaker
Irwin R. Salmanson

Telephone
RI 8-5276

June 3, 1964

JUN 4 1964

AIRMAIL
SPECIAL DELIVERY

Otto Mullinax
L.N.D. Wells
Ri-1-4656
1601 Nat'l Bankers
Life Bldg

Mr. Carl Rachlin, General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Re: Piccadilly Cafeterias of Waco, Inc. v.
CORE, et al - No. 87858-E
(101st Judicial District Court, Dallas, Texas)

Dear Mr. Rachlin:

I am enclosing herewith a copy of the temporary restraining order along with Plaintiff's application for injunction and damages and fiat in the above matter.

The hearing is set for June 11th in the 101st District Court, Judge Dallas A. Blankenship presiding.

I would certainly appreciate any help that you can give us on this. I will probably be calling you by the time you receive this or shortly thereafter, for as I told you I am a novice in this field, but I am determined to do everything I can do to see that the movement here does not fail.

Thank you again for your courtesy and assistance yesterday on the telephone.

Very truly yours,

John B. Wilson, Jr.

JBW:dc
enc.

LAW OFFICES
WILSON & MENAKER
DALLAS, TEXAS
[redacted]

John B. Wilson, Jr.
Marvin Menaker
Irwin R. Salmanson

Telephone
214 RI 8-5276

new office address
Suite 1320 211 North
Erway Bldg
Dallas

June 4, 1964

Home
home TA-1-~~9276~~
9267
66 38
Avalon
Dallas

AIRMAIL
SPECIAL DELIVERY

Mr. Carl Rachlin, General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Re: Picadilly Cafeterias of Waco, Inc. v. CORE, et al - No. 87858-E

Dear Mr. Rachlin:

Herewith I am forwarding a copy of the amended application and amended fiat in the above matter, for your information.

Best regards.

Sincerely,

John B Wilson Jr. dc
John B. Wilson, Jr.

JBW:dc
enc.

Pierson, Robert L. et al Vs Ray J.L. - Sept., 1962 - April,
(Freedom Riders involving 4 ministers (Defendants) from [illegible]
Colleges

Wisconsin

Please Retain Original Order

[1962, Sept, 29]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, JOHN B. MORRIS,
JAMES P. BREEDEN, AND JAMES G. JONES, JR., PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, J. D. GRIFFITH, D. A. NICHOLS,
AND JAMES L. SPENCER, DEFENDANTS

DEFENDANTS' MOTION AND AFFIDAVIT FOR SECURITY FOR COSTS

NOW COME the defendants in the above styled and numbered action, by their attorneys, and respectfully move the Court to require the plaintiffs, and each of them, to give security for all costs accrued and to accrue in this action within 60 days after an order of the Court made for that purpose, and in support thereof would show unto the Court the following:

1. That each of the plaintiffs is a nonresident of the State of Mississippi, and that plaintiffs have not, as defendants believe, sufficient property in this State out of which the costs can be made if adjudged against plaintiffs.

2. That defendants have, as they believe, a meritorious defense and that this motion and affidavit are not made for delay.

WHEREFORE, defendants respectfully move the Court to require the plaintiffs to give security for all costs accrued and to accrue in this action within 60 days after an order of the Court made for that purpose, and that if the security be not given, as required by said order, this action be dismissed.

J. L. RAY
J. D. GRIFFITH
D. A. NICHOLS AND
JAMES L. SPENCER

BY: E. W. STENNETT
City Attorney
Jackson, Mississippi

WATKINS & EAGER
800 Plaza Building
Jackson, Mississippi

BY____________________________
Attorneys for Defendants

UNITED STATES OF AMERICA
STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, J. L. Ray, J. D. Griffith, D. A. Nichols and James L. Spencer, each of whom having been by me first duly sworn deposes and states on oath that he is one of the defendants in the above styled and numbered action and that the matters and facts set out in the foregoing motion are true and correct as therein stated; that each of the defendants has, as he believes, a meritorious defense and that this motion and affidavit are not made for delay.

____
J. L. Ray

____
J. D. Griffith

____
D. A. Nichols

____
James L. Spencer

SWORN TO AND SUBSCRIBED BEFORE ME, this ____ day of September, 1962.

____
NOTARY PUBLIC

MY COMMISSION EXPIRES:
____

The undersigned counsel of record for the defendants hereby certifies that a true copy of the foregoing motion and affidavit has been this day forwarded by United States mail, postage prepaid, to Hon. Carl Rachlin, 280 Broadway, New York, New York, and to Hon. William Higgs, Box 4863, Jackson 6, Mississippi, Attorneys of Record for the plaintiffs.

This ______ day of September, 1962.

Of Counsel for Defendants

[1962, Sept. 29]

[SAME FOR OTHER DEFENDANTS:
J.D. GRIFFITH
J.L. RAY
D.A. NICHOLS]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, JOHN B. MORRIS,
JAMES P. BREEDEN, AND JAMES G. JONES, JR., PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, J. D. GRIFFITH, D. A. NICHOLS,
AND JAMES L. SPENCER, DEFENDANTS

MOTION OF DEFENDANT, JAMES L. SPENCER, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION

NOW COMES James L. Spencer, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. STENNETT
City Attorney
Jackson, Mississippi

WATKINS & EAGER
800 Plaza Building
Jackson, Mississippi

BY_______________________
Attorneys for Defendant

The undersigned counsel of record for the defendants hereby certifies that a true copy of the foregoing motion has been this day forwarded by United States mail, postage prepaid, to Hon. Carl Rachlin, 280 Broadway, New York, New York, and to Hon. William Higgs, Box 4863, Jackson 6, Mississippi, Attorneys of Record for the plaintiffs.

This ______ day of September, 1962.

Of Counsel for Defendants

[1962, Nov. 8]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3515

J. L. RAY, ET AL, DEFENDANTS

NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY FOR COSTS AND TO DISMISS

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on the Fifth Floor of the Federal Post Office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, November 30th, 1962, or as soon thereafter as counsel can be heard.

E. W. STENNETT
City Attorney
Jackson, Mississippi

WATKINS & EAGER
800 Plaza Building
Jackson, Mississippi

BY______________________
ATTORNEYS FOR DEFENDANTS

The undersigned counsel of record for the defendants hereby certifies that a true copy of the foregoing notice has been this day forwarded by United States mail, postage prepaid, to Hon. Carl Rachlin, 280 Broadway, New York, New York, and to Hon. William Higgs, Box 4863, Jackson 6, Mississippi, Attorneys of Record for the plaintiffs.

This 8th day of November, 1962.

Of Counsel for Defendants

[1962, Nov. 19]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

MOTION OF DEFENDANT, JAMES L. SPENCER, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT

NOW COMES James L. Spencer, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court to dismiss the complaint as to said defendant and as grounds therefor would show unto the Court the following:

1. The complaint does not state a claim upon which relief may be granted as against said defendant.

2. The complaint affirmatively shows that said defendant, in committing the acts complained of, was the duly appointed, qualified and acting City Court Judge and ex-officio Justice of the Peace, and as such had complete jurisdiction over the plaintiffs and the alleged offense committed by them within the territorial jurisdiction of the Court, and that said defendant, therefore, is immune to civil liability for the matters set out in said complaint.

E. W. STENNETT
City Attorney
Jackson, Mississippi

WATKINS & EAGER
800 Plaza Building
Jackson, Mississippi

BY Thos. H. Watkins
Attorneys for Defendant

The undersigned counsel of record for the defendants hereby certifies that a true copy of the foregoing motion has been this day forwarded by United States mail, postage prepaid, to Hon. Carl Rachlin, 280 Broadway, New York, New York; and to Hon. William Higgs, Box 4863, Jackson 6, Mississippi, Attorneys of Record for the plaintiffs.

This 19th day of November, 1962.

Of Counsel for Defendants

NOTICE OF HEARING

The plaintiffs and their attorneys of record will please take notice that said defendant will present the foregoing motion to dismiss to the District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on the Fifth Floor of the Federal Post Office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, November 30, 1962, or as soon thereafter as counsel can be heard.

Of Counsel for Defendant

Box 4863
Jackson 6, Mississippi
November 20, 1962

RECEIVED
NOV 23 1962
VLADECK & ELIAS

Miss Loryce Wharton, Clerk
U. S. District Court
Jackson, Mississippi

RE: Robert L. Pierson, et al.
v. J. L. Ray, et al.
Civil Action No. 3315 -
Jackson

Dear Miss Wharton:

Enclosed herewith are (1) Motion To Clerk To Enter Default Against Defendants Under Rule 55(a) and (2) Motion For Default Judgment. Will you please file both motions and also enter default under the first motion. The Motion For Default Judgment is noticed for hearing on Friday, November 30, 1962, and we will appreciate your indicating this on Judge Cox's motion docket for that date.

Thank you again for your courteous assistance.

Yours sincerely,

Carl Rachlin
William L. Higgs
Attorneys for Plaintiffs

By ______________________
William L. Higgs

encl.
cc: Hon. Thomas Watkins
800 Plaza Building
Jackson, Mississippi

Hon. E. W. Stennett
City Attorney
Jackson, Mississippi

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL.	PLAINTIFFS
VS.	CIVIL ACTION NO. 3315
J. L. RAY, ET AL.	DEFENDANTS

MOTION TO CLERK TO ENTER DEFAULT AGAINST DEFENDANTS UNDER RULE 55(a)

Plaintiffs hereby move the Clerk to enter the default of the Defendants in this cause, J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer, for the reason that they have failed to plead or defend as provided by the Federal Rules of Civil Procedure.

The Clerk is respectfully referred to Rules 55(a) and 12 of the Federal Rules of Civil Procedure.

More than 20 days have passed since the service of summons and complaints upon all Defendants, and neither answers nor motions provided for in Rule 12 were filed within said time.

Carl Rachlin
280 Broadway
New York, New York

William L. Higgs
Box 4863
Jackson 6, Mississippi

By ____________________
William L. Higgs

Attorneys for Plaintiffs

The undersigned counsel of record for the Plaintiffs hereby certifies that a true copy of the foregoing Motion has been this day forwarded by United States mail, postage prepaid, to Hon. Thomas Watkins, 800 Plaza Building, Jackson, Mississippi, and to Hon. E.W. Stennett, City Attorney, Jackson, Mississippi, attorneys of record for the Defendants.

This ________ day of November, 1962.

Of Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL. PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL. DEFENDANTS

MOTION FOR DEFAULT JUDGMENT

Plaintiffs hereby move the Court for a default judgment against the Defendants in this cause, J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer, for the reason that they have failed to plead or defend as provided by the Federal Rules of Civil Procedure.

The Court is respectfully referred to Rules 55 and 12 of the Federal Rules of Civil Procedure.

More than 20 days have passed since the service of summons and complaints upon all Defendants, and neither answers nor motions provided for in Rule 12 were filed within said time.

Plaintiffs have filed with the Clerk a Motion To Clerk To Enter Default Against Defendants Under Rule 55(a).

Carl Rachlin
280 Broadway
New York, New York

William L. Higgs
Box 4863
Jackson 6, Mississippi

By ____________________
William L. Higgs
Attorneys for Plaintiffs

The undersigned counsel of record for the Plaintiffs hereby certifies that a true copy of the foregoing Motion has been this day forwarded by United States mail, postage prepaid, to Hon. Thomas Watkins, 800 Plaza Building, Jackson, Mississippi, and to Hon. E. W. Stennett, City Attorney, Jackson, Mississippi, attorneys of record for the Defendants.

This ________ day of November, 1962.

Of Counsel for Plaintiffs

NOTICE OF HEARING

The Defendants and their attorneys of record will please take notice that said foregoing motion for default judgment will be presented by Plaintiffs to the District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on the Fifth Floor of the Federal Post office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, November, 30, 1962, or as soon thereafter as counsel can be heard.

OF COUNSEL FOR PLAINTIFFS

[1962, Nov. 30]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL,	PLAINTIFFS
VS.	CIVIL ACTION NO. 3315
J. L. RAY, ET AL,	DEFENDANTS

DEFENDANT'S ANSWER

NOW COME the defendants in the above styled and numbered action, by their attorneys, without waiving their rights jointly or severally under the motions heretofore filed by said defendants herein, and for answer to the complaint exhibited against them herein would show unto the Court the following:

1. Defendants deny that any of the statutes referred to in paragraph 1 of the complaint are applicable and deny that this Court has jurisdiction over the persons of the defendants or the subject matter of the complaint.

2. Defendants deny the allegations of paragraph 2.

3. Defendants deny that the plaintiffs, or any of them, have a civil action for damages for deprivation of civil rights or for false arrests or imprisonment of plaintiffs by defendants.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Defendants admit that on or about September 13, 1961, the plaintiffs and others entered the Continental Trailways Bus Station in Jackson, Mississippi, at about 11:30 a. m., but deny each and every other allegation of paragraph 12 of the complaint.

13. Admitted.

14. Admitted.

15. Defendants deny each and every allegation contained in paragraph 15 of the complaint.

16. Defendants deny that plaintiffs, Pierson, Morris and Breeden, were held in jail until Tuesday, September 19, 1961, if by that allegation plaintiffs intend to allege that they were denied the right to obtain their freedom by posting reasonable bonds. Defendants would show further that said plaintiffs remained in jail and refused to post reasonable bonds intentionally for the purpose of obtaining publicity incident to their presence in jail.

17. Defendants deny that the plaintiff Jones was held in jail for approximately ten days after the other plaintiffs were released if by that allegation said plaintiff intends to allege that he was denied the right to obtain his freedom by posting reasonable bond. Defendants would further show that said plaintiff remained in jail and refused to post a reasonable bond intentionally for the purpose of obtaining publicity incident to his presence in jail.

18. Defendants deny the allegations of paragraph 18 of the complaint except that they admit that said paragraph correctly quotes a part of the affidavit on which plaintiffs were subsequently tried.

19. Defendants admit the allegations of paragraph 19 of the complaint, but would show unto the Court that each of the plaintiffs was represented by competent legal counsel at said trial and that none of the plaintiffs requested trial by jury.

20. Defendants admit the allegations of paragraph 20, but would show unto the Court that said plaintiffs could have obtained their release any time after their arrest by posting reasonable bonds.

21. Defendants admit that plaintiffs appealed their cases to the County Court of the First Judicial District of Hinds County, Mississippi, and that on or about May 21, 1962, said cases were dismissed by the Judge of said Court, but deny allother allegations of paragraph 21 of the complaint.

22. Defendants deny each and every allegation contained in paragraph 22 of the complaint.

23. Defendants deny each and every allegation contained in paragraph 23 of the complaint.

24. Defendants deny each and every allegation contained in paragraph 24 of the complaint.

25. Defendants deny each and every allegation contained in paragraph 25 of the complaint.

26. Defendants deny that plaintiffs are entitled to recover any amount of or from any of the defendants.

27. Defendants deny that any of the plaintiffs is entitled to any relief.

28. Defendants deny that the costs should be taxed against said defendants, or any of them.

29. Defendants would further show unto the Court that if said defendants committed the acts complained of, which is specifically denied, such action on the part of the defendants,

and each of them, is immune to civil liability to the plaintiffs in this action for the reason that the defendants, Ray, Griffith and Nichols, were duly appointed, qualified and acting police officers of the City of Jackson, Mississippi, and the defendant Spencer was the duly appointed, qualified and acting City Court Judge and ex-officio justice of the peace of the City of Jackson, Mississippi, and that each act committed by said defendants with respect to the plaintiffs, and each of them, was an official act of an officer or judge requiring the exercise of reasonable judgment which cannot be made the basis of this action for civil liability.

Defendants request a jury trial.

E. W. STENNETT
City Attorney
Jackson, Mississippi

WATKINS & EAGER
800 Plaza Building
Jackson, Mississippi

BY______________________________
Attorneys for Defendants

CERTIFICATE

The undersigned counsel of record for the defendants hereby certifies that a true copy of the foregoing answer has been this day personally delivered to Hon. Carl Rachlin and to Hon. William Higgs, Attorneys of Record for the plaintiffs.

This 30th day of November, 1962.

____
Of Counsel for Defendants

[1963, Jan. 4]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL,	PLAINTIFFS
VS.	
J. L. RAY, ET AL,	DEFENDANTS

CIVIL ACTION NO. 3315

ORDER OVERRULING SEPARATE MOTION OF EACH DEFENDANT TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION

THIS DAY this action came on for hearing on the separate motion of each defendant to dismiss the complaint as to said defendant upon the ground that there is a misjoinder of claims or to drop each defendant from the case upon the ground that there is a misjoinder of parties defendant, and the Court having considered same, is of the opinion that said motions, and each of them, should be overruled.

It is, therefore, ordered and adjudged that said motions, and each of them, be and the same are hereby overruled.

ORDERED AND ADJUDGED, this 4th day of January, 1963.

UNITED STATES DISTRICT JUDGE

[1963, Jan. 15]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

Pltfs

Deft

NOTICE BY THE DEFENDANTS OF THE TAKING OF THE DEPOSITIONS OF THE PLAINTIFFS AS ADVERSE PARTIES UNDER RULE 26

The plaintiffs and their Attorneys of Record will please take notice that the defendants will take the depositions of the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., as adverse parties in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, for purposes of discovery and for use as evidence in this case pursuant to Rule 26 of the Federal Rules of Civil Procedure on Friday, February 15, 1963, and that the taking of said depositions will commence at 8:00 o'clock a.m. on said date and will be continued until the taking thereof shall have been completed.

E. W. STENNETT
City Attorney
Jackson, Mississippi

WATKINS & EAGER
800 Plaza Building
Jackson, Mississippi

BY Thos. H. Watkins
ATTORNEYS FOR DEFENDANTS

CERTIFICATE

The undersigned counsel of record for the defendants hereby certifies that a true copy of the foregoing notice of taking of depositions has been this day forwarded by United States mail, postage prepaid, to Hon. Carl Rachlin, 280 Broadway, New York, New York; and to Hon. William Higgs, Box 4863, Jackson 6, Mississippi, Attorneys of Record for the plaintiffs.

This 15th day of January, 1963.

Of Counsel for Defendants

RECEIVED
JAN 30 1963
KLADECK & ELIAS

File
Morris

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JAN 24 1963
Loryce E. Wharton, Clerk
By Deputy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION NUMBER 3315

ROBERT L. PIERSON, ET AL PLAINTIFFS

V.

J. L. RAY, ET AL DEFENDANTS

ORDER ON MOTION OF JAMES L. SPENCER TO DISMISS

THIS CAUSE coming on to be heard on motion of defendant, James L. Spencer, to dismiss the complaint of the plaintiffs against him because of his judicial immunity for the acts complained of, and even though the exemptions of a judge are not dependent upon the motives which prompted his judicial action as stated in Bradley v. Fisher, 80 S.Ct. 646, in the absence of some supporting testimony or affidavits, the Court is unable to determine the question thus presented and is of the opinion that said motion should thus be carried along and decided with the case.

IT IS, THEREFORE, SO ORDERED AND ADJUDGED by the Court that action on said motion of James L. Spencer to dismiss is deferred for decision and action thereon in the trial of this case on its merits.

SO ORDERED, this January 24, A. D., 1963.

UNITED STATES DISTRICT JUDGE

[1963, Mar. 11]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

NOTICE BY THE PLAINTIFFS OF THE TAKING OF THE DEPOSITIONS OF THE DEFENDANTS AS ADVERSE PARTIES UNDER RULE 26

The defendants and their Attorneys of Record will please take notice that the plaintiffs will take the depositions of the defendants, J. L. Ray, J. B. Griffith, D. A. Nichols and James L. Spencer, as adverse parties in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, for purposes of discovery and for use as evidence in this case pursuant to Rule 26 of the Federal Rules of Civil Procedure on Friday, February 15, 1963, and that the taking of said depositions will commence at 1:00 o'clock P.M. on said date and will be continued until the taking thereof shall have been completed.

WILLIAM HIGGS
Box 4863
Jackson 6, Mississippi

CARL RACHLIN
280 Broadway
New York 7, New York

BY____________________
ATTORNEYS FOR PLAINTIFFS

[1963, Mar. 11]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS
VS. CIVIL ACTION NO. 3315
J. L. RAY, ET AL, DEFENDANTS

BE IT REMEMBERED that the depositions of the Plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., as adverse parties were taken by the defendants in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above styled and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 8:00 a.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action on January 15, 1963, and pusuant to the following additional stipulation, to-wit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the plaintiffs may be taken before Mildred A. Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions

are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of said depositions, same shall be presented to one counsel of record for each of the parties and thereafter to each of the plaintiffs for reading and signature, which signature and verification may be had before any notary public or other officer qualified to administer oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party reserves the right to object to otherwise inadmissible matters elicited in the course of the depositions.

APPROVED:

Of Counsel for Plaintiffs

APPROVED:

Of Counsel for Defendants

Mrs. V. Morri

RECEIVED
MAY 30 19
GLADECK & ELIAS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

RULE DESIGNATING CUSTODIAN OF COURT EXHIBITS

It is ordered by the Court that the Court Reporter shall have custody of all exhibits during the trial of any case and shall be responsible for the delivery of all such exhibits to the Clerk of the Court promptly after the completion of the trial of each case. The Clerk shall safely retain the custody of all such exhibits thus placed in her hands by the Reporter until the expiration of the time for appeal of each case, or until the final disposition of each case which is appealed. The Clerk shall return to the attorneys for the respective parties all exhibits in her custody upon the expiration of the time indicated. All exhibits not claimed by attorneys entitled thereto within forty-five days after notice to remove them from the files, shall be destroyed by the Clerk of this Court. A copy of this rule shall be circulated by the Clerk to all interested attorneys.

A copy of this rule shall be certified by the Clerk of this Court to the Supreme Court of the United States as required by the Federal Rules of Civil Procedure.

SO ORDERED this October 3, A. D., 1962.

s/ S. C. Mize
UNITED STATES DISTRICT JUDGE

s/ Harold Cox
UNITED STATES DISTRICT JUDGE

CIVIL ACTION NO. 3315

JACKSON DIVISION

ROBERT L. PIERSON, JOHN B. MORRIS,
JAMES P. BREEDEN, AND JAMES G.
JONES, JR.

VS.

J. L. RAY, J. B. GRIFFITH, D. A.
NICHOLS, AND JAMES L. SPENCER

EXHIBITS

May 14, 1963

Number	Description	Sponsor	Ident.	Evidence
P-1	Certified copy of all the pleas and proceedings in the case of State of Mississippi vs James Gerrard Jones, in the County Court of the First Judicial District of Hinds County, Case No. 12941, Filed October 10, 1961, with affidavit by H. T. Ashford, Jr., Circuit and County Courts, Hinds County, Miss., attached.	Jones		X
P-2	Certified Copy of all the pleas and proceedings in the case of State of Mississippi vs John Burnett Morris, in the County Court of the First Judicial District of Hinds County, Case No. 12935, filed October 2, 1961, with affidavit by H. T. Ashford, Jr., Circuit and County Court, Hinds County, Miss., attached			X
D-1	Printed Pamphlet "Message to the Episcopal Church's 60th General Convention, Detroit, Michigan, September 17-29, From the Clergy on the Prayer Pilgrimage Between New Orleans and Detroit, September 12-17".	Jones		X

WITNESSES:

1. James G. Jones, Jr., Episcopal Clergyman, 4925 S. Woodlawn Avenue, Chicago, Ill.
2. John B. Morris, Episcopal Clergyman, Atlanta, Ga.

CIVIL ACTION NO. 3315

JACKSON DIVISION

May 15, 1963

EXHIBITS CONTINUED

Number	Description	Sponsor	Ident.	Evidence
P-3	Statement by Rev. V. Powell Woodward For Fifteen Episcopal Ministers (Ruled out by Court) (marked for the record only)	Morris		
D-2	Communication dated June 16, 1961 from (Rev.) John B. Morris, Executive Director addressed to "TO CLERICAL MEMBERS".	Morris		X
D-3	Communication from (Rev.) John B. Morris, Executive Director addressed "TO APPLICANTS FOR THE PRAYER PILGRIMAGE:"	Morris		X
D-4	Communication dated June 30, 1961 from (Rev.) John B. Morris, Executive Director "TO CLERICAL MEMBERS:"	Morris		X
D-5	Communication dated July - 1961 from (Rev.) John B. Morris, Executive Director, "TO THE CLERGY:"	Morris		X
D-6	Communication dated August 4, 1961 from (Rev.) John B. Morris, "TO PILGRIMAGE APPLICANTS:"	Morris		X
D-7	Communication dated August 19, 1961 from (Rev.) John B. Morris, "TO PILGRIMAGE APPLICANTS:"	Morris		X
D-8	Communication dated August 26, 1961 from (Rev.) John B. Morris, "TO PILGRIMAGE APPLICATION:"	Morris		X
D-9	Communication dated September 2, 1961 from John B. Morris, "TO PILGRIMAGE PARTICIPANTS:"	Morris		X
D-10	Communication dated September 5, 1961 from John B. Morris, "TO PILGRIMAGE PARTICIPANTS:"	Morris		X
D-11	Issue of Redbook of May 1962 (Ruled out by Court) (marked for the record only)	Pierson		
P-4	Certified copy of all the pleas and proceedings in the case of State of Mississippi vs Robert Laughlin Pierson, in the County Court of the First Judicial District of Hinds County, case No. 12936, Filed October 2, 1961, with affidavit by H. T. Ashford, Jr., Circuit and County Courts, Hinds County, Miss., attached.	Pierson		X

WITNESSES cont'd:

2. John B. Morris
3. Robert L. Pierson, Episcopal Clergyman, White Plains, N.Y.
4. Meyer Allen Thompson, Jackson, Miss.
5. James P. Breeden, Episcopal Clergyman, Boston, Mass.

CIVIL ACTION NO. 3315

JACKSON DIVISION

May 15, 1963

EXHIBITS CONTINUED

Number	**Description**	**Sponsor**	**Ident.**	**Evidence**
P-5	Certified copy of all the pleas and proceedings in the case of State of Mississippi vs James Pleasant Breeden in the County Court of the First Judicial District of Hinds County, Case No. 12929, Filed October 2, 1961, with affidavit by H.T. Ashford, Jr., Circuit and County Courts, Hinds County, Miss., attached	Breeden		X

WITNESSES cont'd:

James P. Breeden

CIVIL ACTION NO. 3315

May 16, 1963 **JACKSON DIVISION**

EXHIBITS CONTINUED

NOT IN EVIDENCE BUT A PART OF THE RECORD

Number	Description	Sponsor	Ident.	Evidence
P-6	Question and Answer on Pages 21 & 22 of the deposition of James L.Spencer	Spencer		
P-7	Questions and Answers on Pages 28 & 29 of the deposition of James L.Spencer	"		
P-8	Questions and Answers on Page 37 (only) of the deposition of James L. Spencer	"		
P-9	Questions and Answers on Pages 39 & 40 of the deposition of James L. Spencer	"		
P-10	Answer on Page 43 of the deposition of James L. Spencer	"		
P-11	Question and Answer on Page 43 & 44 of the deposition of James L. Spencer	"		

WITNESS:ES:

James L. Spencer, Jackson, Mississippi, called as an Adverse witness.

Rev. Layton P. Zimmer, Swarthmore, Pa.
J. L. Ray, Chief Police Dept. Jackson, Miss.
D. A. Nichols, Member of Police Force, Jackson, Miss.
J.B. Griffith, Member of Police Force, Jackson, Miss.
James L. Spencer, Jackson, Miss.

[1963, May 13]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

DEFENDANTS' MOTION TO AMEND ANSWER

NOW COME the defendants in the above styled and numbered action, by their attorneys, and respectfully move the Court to permit them to amend their answer filed herein by adding thereto the following:

30. Defendants would further show unto the Court that the defendants, Ray, Griffith, and Nichols, had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested at the time of their arrests, and that the defendant, Spencer, had probable cause to believe that the plaintiffs were guilty of the offense for which they were tried at the time of their conviction.

E. W. STENNETT
City Attorney
Jackson, Mississippi

WATKINS & EAGER
800 Plaza Building
Jackson, Mississippi

BY____________________________
Attorneys for Defendants

CERTIFICATE

The undersigned counsel of record for the defendants hereby certifies that a true copy of the foregoing motion has been this day personally delivered to Honorable Carl Rachlin, Attorney of Record for the plaintiffs.

This 13th day of May, 1963.

Of Counsel for Defendants

[1963, May 17]

RECEIVED
MAY 20 1963
VLADECK & ELIAS

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS.

J. L. RAY, ET AL, DEFENDANTS

CIVIL ACTION NO. 3315

JUDGMENT

THIS ACTION came on for trial on its merits, the plaintiffs and the defendants having announced ready for trial after issue joined, and a jury, composed of Ben H. Pace and eleven others, having been impaneled as provided by law and accepted by the plaintiffs and the defendants, and the Court and jury having heard all of the evidence and the arguments of counsel, and the jury having received the instructions of the Court, retired to consider their verdict and presently returned into open Court the following verdict:

> "We, the jury, find for the defendants, J. L. Ray, J. D. Griffith, D. A. Nichols, and James L. Spencer."

and which verdict was duly received and entered as the verdict of the jury in said action.

It is, therefore, ordered and adjudged that the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., and each of them, do have and recover nothing of and from the defendants, J. L. Ray, J. D. Griffith, D. A. Nichols, and James L. Spencer, or either of them, and that said defendants go hence without delay, and all Court costs herein incurred be and the same are hereby taxed against the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., for all of which let execution issue, as provided by law.

ORDERED AND ADJUDGED, this _____ day of May, 1963.

UNITED STATES DISTRICT JUDGE

[1963, May 24]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

PLAINTIFFS

ROBERT L. PIERSON, ET AL.

CIVIL ACTION NO. 3315

VS.

J. L. RAY, ET AL.

ORDER

This cause came on for trail on its merits, the plaintiffs and the defendants having announced ready for trial after issue joined, and a jury, composed of Ben H. Pace and eleven others, having been impaneled as provided by law and accepted by the plaintiffs and the defendants, and the Court and jury having heard all of the evidence and the arguments of counsel, and the jury having received the instructions of the Court, retired to consider their verdict and presently returned into open Court the following verdict:

"We the jury, find for the defendants, J. L. Ray,
J. D. Griffith, D. A. Nichols, and James L. Spencer."

and which verdict was duly received and entered as the verdict of the jury in said action.

The plaintiffs having then and there made a motion for a new trial, stating the following reason therefor: verdict was against the weight of the evidence, that the instructions given the jury was given the jury in a manner which was prejudicial to the plaintiffs, and that the entire trial was conducted in such a manner that it was prejudicial to the plaintiffs,

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of the plaintiffs for a new trial be and the same is hereby denied.

ORDERED AND ADJUDGED, this _____ day of May, 1963.

UNITED STATES DISTRICT JUDGE

[1963, June 10]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, JOHN B. MORRIS,
JAMES P. BREEDEN, AND JAMES G. JONES, JR.
PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, J. B. GRIFFITH, D. A.
NICHOLS, AND JAMES L. SPENCER
DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given that Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Final Judgment entered in this action on May 21, 1963.

Dated: June 10, 1963.

L. H. ROSENTHAL, AND
CARL RACHLIN
ATTORNIES FOR APPELLANTS
ROBERT L. PIERSON,
JOHN B. MORRIS,
JAMES P. BREEDEN, AND
JAMES G. JONES, JR.

L. H. Rosenthal
242½ East Capitol Street
Jackson, Mississippi

Carl Rachlin
280 Broadway
New York 7, New York

[1963, June]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON, DIVISION

ROBERT L. PIERSON, JOHN B. MORRIS,
JAMES P. BREEDEN, AND JAMES G. JONES, JR.
PLAINTIFFS

VS.
CIVIL ACTION NO. 3315

J. L. RAY, J. B. GRIFFITH, D. A.
NICHOLS, AND JAMES L. SPENCER
DEFENDANTS

DESIGNATION OF RECORD ON APPEAL

Appellants, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., designate the following portions of the record, proceedings, and evidence to be contained in the record on appeal in this action:

1. All formal papers of every nature filed in this action with the clerk of the United States District Court for the Southern District of Mississippi.

2. The entire transcrip of the evidence and proceedings in this action.

L. H. ROSENTHAL, AND CARL RACHLIN
ATTORNEYS FOR APPELLANTS
ROBERT L. PIERSON,
JOHN B. MORRIS,
JAMES P. BREEDEN, AND
JAMES G. JONES

L. H. ROSENTHAL
242½ EAST CAPITOL STREET
JACKSON, MISSISSIPPI

CARL RACHLIN
[illegible] BROADWAY
NEW YORK 7, NEW YORK

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

ROBERT L. PIERSON, ET AL

V. NO. 3315 - JACKSON DIVISION

J. L. RAY, ET AL

ORDER EXTENDING TIME FOR FILING RECORD

It being made to appear to the Court that notice of appeal has been filed in the above styled cause, but that the printed record has not been completed and the Clerk is not in position to file the record on appeal and that the time should be extended, so for good cause shown it is therefore ordered by the Court that the time for filing the record on appeal and docketing the action in the Court of Appeals be and the same is hereby extended to ninety days from the date of the first notice of appeal.

ORDERED, this the 3rd day of July, 1963.

S. C. MIZE

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 21335

ROBERT L. PIERSON, ET AL

Appellants,

versus

J. L. RAY, ET AL

Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi.

Before HUTCHESON, JONES and WISDOM, Circuit Judges.

BY THE COURT: -

ON CONSIDERATION of the motion of appellees to docket and dismiss the appeal in the above entitled and numbered cause, and of the affidavit of appellants in opposition, IT IS ORDERED that said motion to dismiss be, and the same is hereby DENIED.

(Original Filed March 25, 1964)

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

- - - - - - - - - - - - - - - - - - - -X

ROBERT L. PIERSON, et al :

Appellants, :

: No. 21325
vs. NOTICE OF MOTION

J. L. RAY, et al :

Appellees. :

- - - - - - - - - - - - - - - - - - - -X

To: E. W. Stennett, Esq.
Thomas H. Watkins, Esq.
Attorneys for Defendants.

Please take notice, that the undersigned will move this Court at the United States Court of Appeals, Fifth Circuit Courthouse, City of New Orleans, State of Louisiana on the 13th day of April, 1964 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an additional thirty (30) days for Appellants to file briefs in the above entitled action. The Deputy Clerk, Mr. Gamucheau, has advised the undersigned on the telephone that this case in all likelihood cannot be argued before the Fall Term of this Court and a thirty (30) day extension to file the briefs will not in any way interfere or delay the processes of this Court. Accordingly, an extension of thirty (30) days is respectfully requested.

CARL RACHLIN, Esq.
165 West 46th Street
New York, N.Y., 10036

L.H. ROSENTHAL, Esq.
221 North President Street
Jackson, Mississippi

[1963]

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON, MISSISSIPPI

ROBERT L. PIERSON, JOHN B. MORRIS, JAMES P. BREEDEN, AND JAMES G. JONES, JR. — PLAINTIFFS

VS. — No. 3315

J. L. RAY, J. B. GRIFFITH, D. A. NICHOLS, AND JAMES L. SPENCER — DEFENDANT

MEMORANDUM OF THE PLAINTIFFS ON THE ISSURE OF DAMAGES

A COMPENSATORY DAMAGES

A successful plaintiff in an action for false imprisonment is entitled to compensation for all of the actual injuries shown to have been sustained by him, which are the proximate result of defendant's wrongful act and its natural and proximate consequence.

In the present case there was an illegal infringement of the legal rights of the plaintiffs; namely the right to travel freely among the several states as guaranteed by Article 1, Section 8, Clause 3, and the 14th Amendment of the Constitution of the United States. Therefore, there is as a matter of law a presumption of damages in the present case. Mississippi law recognize a presumption of damages when there has been a legal right infringed upon. The Mississippi Supreme Court speaking through Justice Cook in the case of Doherty v. Mississippi Power Co., 178 Miss. 204, 173 So. 287, stated:

> "The law presumes damages from the infringement of a legal right."

Concerning ourself now with the issure of whether or not the necessary expenses incurred by the plaintiffs in obtaining their release from the Jackson, Mississippi City jail constitutes real and actual damages we find that the Mississippi law governing this question is in full agreement with the contentions of the plaintiffs that such expenses constitutes actual damages. Justice Hall speaking for the Mississippi Supreme Court in the case of Vining et al. v. Smith, 213 Miss. 850, 58 So.2d 34, stated:

> "As a general rule, a party is entitle to all legitimate expenses that he may show to have been incurred by him in an honest endeavor to reduce the damages flowing from or following the wrongful act"

Further Justice Wood speaking for the Mississippi Supreme Court in the false imprisonment case of Hewellette v. George, 68 Miss. 703, 9 So. 885, 13 L. R. A. 682, recognized such expenses as constituting actual damages thusly:

> "We can not consent that actual damages in this case must be confined to the few dollars and cents shown to have been expended by plaintiff to secure her release from the asylum, ..."

Turning our attention now to the question of whether or not the time lost during the illegal confinement of the plaintiffs in the Jackson, Mississippi city jail, the mental pain suffered by the plaintiffs due to their illegal arrest and illegal confinement, the shame and mortification of the plaintiffs suffered due to their illegal arrest and illegal confinement, and the injury to the plaintiffs character due to their illegal arrest and illegal detention, would constitute real and actual damages, we find that each of these injuries are of such a nature that in an action for false imprisonment they each constitute an actual injury for which an award of compensatory damages may be given. Justice Wood while speaking for the Mississippi Supreme Court recognized each of these injuries as being an actual injury in the false imprisonment case of Hewellette v. George, 68 Miss. 703, 9 So. 885, 13 L. R. A. 682. He stated the law thusly:

> "Here was actual damages in the extent of $200, and actual damage for 11 days of time lost during confinement in the asylum, and to these should have been added damages for mental pain and suffering, shame and mortification, and the injury to character. Surely these injuries were real ones, and compensation for these would have been an award of actual damages. Compensation and actual damages are one, and compensation for wrongs done to one's character is in no sense punitory. We can not consent that the actual damages in this case, must be confined to the few dollars and cents shown to have been expended by plaintiff to secure he release from the asylum, and that no compensatory damages were awardable for shame and anguish and hurt to character."

EXEMPLARY DAMAGES

We would like to call to the Court's attention the case of Atkinson v. Dixie Greyhound Lines, Inc., et al., 143 F.2d 477, ceriorari denied 65 S. Ct. 92, 323 U. S. 758, 89 L. Ed. 607, as being the controling law of the state of Mississippi on the question of exemplary damages in an action for false imprisonment. Because of the similarities of Atkinson v. Dixie Greyhound Lines, Inc. et al., and the case at bar a short statement of the fact in Atkinson v. Greyhound Lines, Inc., et al. is here given as determined by the jury and the Court:

> "The plaintiff's evidence showed that he worked in a grocery store in Jackson, Mississippi, on a Saturday in January, 1940 until 11:30 that night, having worked over sixteen hours; that when he left his work he went to a coffee shop and ate supper and then entered the defendants' bus station at about 1:15 in the morning; that he went immediately to the ticket window to purchase a ticket to his home at Byron, which was about seven miles south of Jackson, the price of the ticket being 26 cents; that he had a large sack of groceries in one hand and in the other a one dollar bill with which to purchase the ticket; that the agent was busy writing and upon being advised that plaintiff would purchase a ticket to Byron informed him that the bus did not run in that direction until 4:30 that morning; that he made no move to wait upon plaintiff and thereupon plaintiff took a seat in the waiting room; that latter he went up to the balcony to the men's toilet and then seated himself in a seat on that floor which was provided for passengers; that Latter on Billingsley, the agent of the defendant, came to the plaintiff and ask him where he was going and when told said, "You have until 4:30" and turned away; when plaintiff made an effort to again purchase a ticket the agent said, "You have until 4:30" and plaintiff kept his seat.
>
> Latter two police officers who had been summoned by Billingsley entered the bus station and Billingsley pointed out the plaintiff and informed the police that the plaintiff had been loafing in the depot for about a week; the officers thereupon seized plaintiff and arrested and searched him and removed him from the bus station to the police headquarters where he was held for about two hours and then released and given his bag of groceries and he walked back through the snow to the station and found that his bus had gone; he waited until 9 o'clock when he boarded another bus and returned to his home. The evidence further showed that plaintiff had been working at Jackson for three months and had been buying tickets at the bus station and riding to his home nearly every day during that time; that he had never been arrested before; that he was sober on the occasion and presented himself at the station in a proper manner; that his deportment and demeanor at all

> times were correct and good; that he was a passenger of defendants as he was in their bus station waiting for his bus; and he was humiliated since many people knew of his arrest and imprisonment and that it would militate against him in the event he sought new employment."

The Court in its opinion in Atkinson v. Dixie Greyhound Lines, Inc., et al., 143 F.2d 477, coriorari denied 65 S. Ct. 92, 323 U. S. 758, 89 L. Ed. 607, stated the following as being the controlling law in Mississippi governing the issure of exemplary damages in a false imprisonment case:

> "Punitive damages: to authorize the infliction of punitive damages, the wrongful act complained of must be either intentional, or result from such gross disregard of the rights of the complaining party as amounts to willfulness on the part of the wrongdoer. Illinois Central R. Co. v. Ramsey, 157 Miss. 83, 127 So. 725, 726; Chicago, St. L. & N. O. R. Co. v. Scurr, 59 Miss. 456, 42 Am. Rep. 373; Mississippi & T. R. Co. v. Gill, 66 Miss. 39, 5 So. 393; New Orleans & N. E. R. Co. v. Martin, 140 Miss. 410, 105 So. 864."
>
> "Punitive damages may be recovered not only for a willful and intentional wrong, but for such gross and reckless negligence as is equivalent to such wrong. A spirit of wantonness and recklessness is at war with good faith. An act done in such a spirit is oftentimes just as harmful as if prompted by malice. Neal v. Newburger Co., 154 Miss. 691, 123 So. 861, 863; Hines v. Imperial Naval Stores Co., 101 Miss. 802, 58 So. 650; Godfrey v. Meridian L. & R. Co., 101 Miss. 565, 58 So. 534; Yazoo & M. V. R. Co. v. Fletcher, 101 Miss. 569, 56 So. 667; Vicksburg Waterworks Co. v. Dutton, 98 Miss. 209, 53 So. 537."
>
> "That a case of false arrest or malicious prosecution in Mississippi can be such as to call for the infliction of punitive or exemplary damages is no longer in doubt. When an arrest has been made and imprisonment imposed and the evidence shows no legal grounds therefor, such conduct has been characterized as such gross wrong as to evince a wanton or willful disregard of the rights of others, and if so, then the question of punitive damages under proper instruction by the court becomes a question for the jury. Laster v. Chaney, 180 Miss. 110, 177 So. 524; Bounds v. Watts, 159 Miss. 307, 131 So. 804; Illinois Central R. Co. v. Ramsay, 157 Miss. 83, 127 So. 725; 25 C. J. page 551, Section 161; 35 C. J. S., False Imprisonment, Section 59; Southern R. Co. v. Hall, 209 Ala. 237, 96 So. 73; Virginia Electric & Power Co. v. Wynne, 149 Va. 882, 141 S. E. 829; Stewart v. Sonneborn, 96 U. S. 187, 25 L. Ed. 116; Taggart v. Peterson, 182 Miss. 82, 181 So. 137."
>
> "From what we have said, it is patent that the court erred in refusing, under proper instructions, to submit to the jury the question of punitive damages, that is: Did Billingsley in and about the arrest and imprisonment of plaintiffs act with such disregard of the rights of the plaintiff as wanton or willful misconduct? This is a jury question under the facts of this case. It is also relevant to prove the financial worth of defendants. Whitfield v. Westbrook, 40 Miss. 311, 320; [illegible] v. [illegible], 80 Miss. 53, 63, 31 So. 434, 92 Am. St.

[1963]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL. PLAINTIFFS
VS. CIVIL ACTION NO. 3313
J. L. RAY, ET AL. DEFENDANTS

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS DEFENDANT JAMES L. SPENCER

I. DEFENDANT SPENCER'S EXTRA-JUDICIAL ACTIONS IN CONCERT WITH THE OTHER DEFENDANTS RENDER HIM LIABLE FOR DAMAGES UNDER THE CIVIL RIGHTS ACTS (42 U.S.C. 1981 *et seq.*)

Defendant Spencer is alleged in the complaint to have intentionally acted in concert with the three Defendant police officers to deprive Plaintiffs of their constitutional rights by enforcing segregation of the races through their arrest, confinement, detention, conviction, and imprisonment under a charge that had no factual basis whatsoever. (COMPLAINT, paragraphs 3, 11, 19, 22, 23, and 24).

The necessary meaning of the language used in the complaint is that Defendant Spencer intentionally acted in concert with the Defendant police officers to achieve all of the above results of arrest, confinement, detention, conviction, and imprisonment. In this connection the Court's attention is called to the recent case of *Yates v. Village of Hoffman Estates, Illinois*, 209 F. Supp. 757 (N.D. ILL., Oct., 1962), in which the defendant police magistrate was held liable for damages under the Civil Rights Acts as a result of his extra-judicial acts. Also, the landmark decision of *Monroe v. Pape*, Ill. 1961, 81 S. Ct. 473, 365 U.S. 167, 5 L. Ed. 2d 492, requires that "(Section 1983) ... be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." (at p. 187 of 365 U.S.).

II. DEFENDANT SPENCER'S ACTIONS, BOTH JUDICIAL AND EXTRA-JUDICIAL, TAKEN TOGETHER AND IN CONCERT WITH THE OTHER DEFENDANTS, RENDER HIM LIABLE FOR DAMAGES UNDER THE CIVIL RIGHTS ACTS.

The Supreme Court of the United States early recognized the principle that judges could be held liable in a civil suit for their actions taken even in court and at common law when there was a clear absence of jurisdiction known to the judge. As the Court stated in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1871): "Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible." (p.351-352 of 13 Wall.).

The U.S. Courts of Appeals have made several decisions bearing closely upon this problem.

In Picking v. Pennsylvania R. R. Co., 151 F. 2d 240 (3rd Cir., 1945), the Third Circuit, considering the liability of a justice of the peace under the Civil Rights Acts, held that: "The refusal of a state officer to perform a duty imposed on him by the law of his state because he has conspired with others in a conscious design to deprive a person of civil rights in legal effect may be the equivalent of action taken 'under the color' of the law of the state ... In making this statement we are not unmindful of the absolute privilege conferred by the common law upon judicial officers in the performance of their duties ... The absolute privilege was extended even to the conduct of judicial officers dictated by malice. But the privilege as we have stated was a rule of the common law. Congress possessed the power to wipe it out. We think that the conclusion is irresistible that Congress by enacting the Civil Rights Act sub judice intended to abrogate the privilege to the extent indicated by that act and in fact did so. Section 1 of the Third Civil Rights Act explicitly applied to 'any person.' R. S. Section 1979 applies to 'every person.' We can imagine no broader definition. The statute must be deemed to include members of the state judiciary acting in official capacity. The result is of fateful importance to the judiciary of the several states ... But the policy involved is for Congress and not for the courts ... For the reasons stated we conclude [illegible] Justice of the Peace Keiffer." (at p. 250-251).

The Sixth Circuit case of McShane v. Moldovan, 172 Fed. 2d 1016 (6th Cir., 1949), seems even closer to the case at bar, even to the point of the overturning of the police justice's decision by the state appellate court.

This Court's attention should also be called to the Fifth Circuit case of Gay v. Heller, 258 Fed. 2d 313 (5th Cir., 1958), which, though upholding the in-court immunity in that case of the particular state circuit judge, recognizes the principle of liability of a state judge under circumstances in which there were factual in-court circumstances similar to the case at bar and in which the judge's challenged actions extended beyond his court in time and place.

Respectfully submitted,

Carl Rachlin

William Higgs

Attorneys for Plaintiffs

Higgs

by: ______________________

William Higgs

1 [illegible] copy to Carl

1 original to Judge

[1963]

IN THE UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr.		Plaintiffs
v.	No. ________	
J. L. Ray, J. B. Griffith, D.A. Nichols, and James L. Spencer		Defendants

COMPLAINT

D applicability
D statutes
D Jur over
person or subject matter

Jurisdiction:

1. Jurisdiction is based upon 28 U.S.C. 1343 and 42 U.S.C. 1981 and 1983 and upon 28 U.S.C. 1332.

D

2. Each Plaintiff has been damaged in an amount greater than $10,000.00, exclusive of interest and costs.

Nature of Cause of Action:

D

3. This cause of action is a civil action for damages for deprivation of civil rights and for false arrest and imprisonment of Plaintiffs by Defendants.

Plaintiffs:

A 4. Plaintiff Robert L. Pierson is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of New York.

A 5. Plaintiff John B. Morris is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of Georgia.

A 6. Plaintiff James P. Breeden is an adult male, an Episcopal Clergyman, a member of the Negro race, and a citizen of the State of Massachusetts.

A

7. Plaintiff James G. Jones, Jr. is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of Illinois.

Defendants:

A

8. Defendant J. L. Ray is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

A

9. Defendant J. B. Griffith is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

D

10. Defendant D. A. Nichols is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

D

11. Defendant James L. Spencer is the police justice and ex-officio Justice of the Peace of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of the State of Mississippi.

The Factual Situation:

A plf entered through front 11:30 AM denies rest

12. On September 13, 1961, Plaintiffs and eleven other Episcopal Clergymen, amongst whom were two members of the Negro race and nine members of the Caucasion race, traveling in a group on a Prayer Pilgrimage, entered in orderly fashion the Continental Trailways Bus Station in Jackson, Mississippi, about 11:30 A.M. for the purpose of continuing their journey from New Orleans, Louisiana, to Detroit, Michigan to the General Convention of their Church. All possessed tickets to Chattanooga, Tennessee at such time. The group entered through a front door of the station, in front of which was a sign stating in substance "White Waiting Room Only -- By order of Police Department."

A

13. After Plaintiffs and the other Clergymen referred to above entered the station Defendants Griffith and Nichols placed Plaintiffs and the others under arrest, after ordering them to move on and after refusal by Plaintiffs and the others to do so.

A

14. Thereafter Defendant Ray approached Plaintiffs and told them to move on. Plaintiffs refused to do so and were then placed under arrest by Defendant Ray and taken to the Jackson City jail.

D

15. At no time was there any unusual gathering, occurrence, or circumstances in or near the vicinity of the bus station at or near the time of the arrest of Plaintiffs nor did any person present, including Plaintiffs, create any disturbance or commit any disorderly acts whatever.

D
say could have kept but wanted publicity
same as 16

16. Plaintiffs Pierson, Morris, and Breeden were held in jail until Tuesday, September 19, 1961.

17. Plaintiff Jones was held in jail for approximately ten days after the other Plaintiffs were released.

Admit affidavit quoted

18. Plaintiffs were held, tried, and convicted upon affidavits of Defendant Ray alleging that Plaintiffs "on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there willfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi."

A
but say defts counsel did not ask for a jury

19. Defendant Spencer was the judge at the trial held on Friday, September 15, 1961, without a jury at which trial Plaintiffs were tried and convicted on the affidavits mentioned in paragraph 18, supra, and on the testimony of Defendant Ray. The convictions were based upon violations of Section 2087.5 of the Mississippi Code of 1942, as amended.

A - but say D's could have had bail

20. Plaintiffs Pierson, Morris, and Breeden posted bond and were released from jail on Tuesday, September 19, 1961. Plaintiff Jones posted bond and was released from jail approximately ten days after the other Plaintiffs.

21. The Plaintiffs duly appealed to the Hinds County Court from the Jackson Municipal Court as provided by Mississippi laws. As a necessary consequence of prosecuting their appeals Plaintiffs were required to appear in the Hinds County Court before County Judge Russell Moore for arraignment on October 9, 1961, at which time they pleaded not guilty. Thereafter, on April 10, 1962 Plaintiffs Morris, Pierson, and Breeden were required to return

to Jackson for further purposes of prosecuting their appeals. On May 21, 1962 the trial of Plaintiff Jones was held before Judge Moore. At the end of the prosecution's evidence, at which Defendant Griffith testified, the Court, upon Plaintiff Jones's motion, dismissed the case on the grounds that the evidence showed no violation of law.

Immediately thereafter the City Prosecutor moved the dismissal of charges against the other Plaintiffs and the eleven other Clergymen referred to above, stating that the evidence in the remaining cases was the same as in the Jones case. This motion was granted.

Claim I:

22. Defendants, acting severally and in concert, under color of law and under color of Section 2087.5 of the Mississippi Code of 1942, as amended, and under color of the Constitution, laws, policy, customs and usages of the State of Mississippi dealing with segregation of the Negro race from the Caucasion race, subjected and caused to be subjected Plaintiffs to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States in that Defendants have arrested, convicted and sentenced Plaintiffs to jail and confined Plaintiffs therein for the sole purpose of enforcing the segregation laws, customs, policies, and usages of the State of Mississippi.

23. Plaintiffs have been deprived of their rights, privileges, and immunities as citizens of the United States and of the Several States to travel freely among the States of the United States, to equal protection of the laws, and to due process of law, among other rights, privileges, and immunities guaranteed by the Constitution and laws of the United States. These rights, privileges, and immunities are guaranteed, in particular, by Article I, Section 8, Clause 3, and the 14th Amendment of the Constitution of the United States and laws passed pursuant thereto.

Claim II:

24. Plaintiffs have been intentionally falsely arrested, confined, detained, and imprisoned by Defendants, acting severally and in concert, without legal cause, process, or justification. At no time about the occasion of their arrests did the Plaintiffs commit any acts justifying their arrests by

Defendants Ray, Griffith, and Nichols or their convictions by Defendant Spencer under the section of the Mississippi law with which Plaintiffs were charged with violating, Section 2087.5, or under any of the other laws of the State of Mississippi.

Statement of Damages:

25. Plaintiffs have each been injured and damaged by Defendants' acts against Plaintiffs in the amount of $10,001.00 for each Plaintiff and each Plaintiff has further been forced to expend the sum of approximately $1,000.00 as a direct and proximate result of protecting and defending himself against the acts of Defendants.

Prayer for Relief:

26. Wherefore, each Plaintiff demands judgment against Defendants, jointly and severally, in the amount of $11,001.00, for a total judgment against Defendants of $44,004.00.

27. Plaintiffs request such other and further relief as is just.

28. Plaintiffs demand that Defendants pay the cost of this action.

Carl Rachlin
280 Broadway
New York, New York

William Higgs
Box 4863
Jackson 6, Mississippi

ATTORNEYS FOR PLAINTIFFS

William Higgs
One of the Attorneys of
Record in this cause
and a member of the bar
of this Court.

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 Forsyth St., N. W. Atlanta 3, Ga.

FOR RELEASE: TUESDAY, September 11, 1962:

Following are statements on the suit filed in Jackson by four Episcopal clergymen from several leaders of civil rights and religious groups:

I. STATEMENT OF LESLIE W. DUNBAR, EXECUTIVE DIRECTOR OF THE SOUTHERN REGIONAL COUNCIL:

"The legal action by the Episcopal ministers before federal court in Jackson may clarify an important area of civil liberties. Can the police power of a municipality be used to frustrate peaceful protest by a minority against discrimination, or are the police obligated to protect the right and freedom of peaceful protest? The decision of the case can have wide effect wherever there are troubled race relations."

II. STATEMENT OF THE REV. WYATT T. WALKER, EXECUTIVE ASSISTANT TO DR. MARTIN LUTHER KING, JR.:

"This is a most significant step for it brings directly under the scrutiny of the Federal Courts these specious arrests that are aimed at perpetuating segregation. We are gratified that our brethren of the clergy are charting the way for still another creative attack on the entire evil system."

III. STATEMENT OF RAYMOND M. HILLIARD, CHAIRMAN, NATIONAL CATHOLIC CONFERENCE FOR INTERRACIAL JUSTICE:

"The suit for damages filed by an interracial group of Episcopal clergymen who were falsely arrested and convicted in Jackson, Mississippi, is a responsible and desired action. It emphasizes clearly the rampant violations of individual civil rights perpetrated on behalf of evil racial segregation. We hope the suit will encourage the use of police powers to protect the rights of all citizens."

IV. STATEMENT OF JAMES FARMER, NATIONAL DIRECTOR, CONGRESS OF RACIAL EQUALITY:

"I applaud this civil action by the Episcopal clergymen against the police authorities of Jackson, Mississippi, charging false arrest. Unlawfully arrested by irresponsible police action, the ministers were acquitted. Hundreds of other Freedom Riders, similiarly arrested, have been convicted. The clergymen's suit is thus of great significance. It may serve as a deterrent to the arbitrary police power now being used in many Southern cities to maintain illegal segregation."

V. STATEMENT OF ROY WILKINS, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE:

"The National Association for the Advancement of Colored People hails this legal action by members of the Episcopal Society For Cultural and Racial Unity. The 1961 segregation gimmick, the breach of the peace charge, may well be knocked out by the suit of these Episcopalian Clergymen."

IN THE UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

Robert L. Pierson, John B. Morris,
James P. Breeden, and James
G. Jones, Jr.
Plaintiffs

v. No. ________

J. L. Ray, J. B. Griffith, D.A.
Nichols, and James L. Spencer
Defendants

COMPLAINT

Jurisdiction:

1. Jurisdiction is based upon 28 U.S.C. 1343 and 42 U.S.C. 1981 and 1983 and upon 28 U.S.C. 1332.

2. Each Plaintiff has been damaged in an amount greater than $10,000.00, exclusive of interest and costs.

Nature of Cause of Action:

3. This cause of action is a civil action for damages for deprivation of civil rights and for false arrest and imprisonment of Plaintiffs by Defendants.

Plaintiffs:

4. Plaintiff Robert L. Pierson is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of New York.

5. Plaintiff John B. Morris is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of Georgia.

6. Plaintiff James P. Breeden is an adult male, an Episcopal Clergyman, a member of the Negro race, and a citizen of the State of Massachusetts.

7. Plaintiff James G. Jones, Jr. is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of Illinois.

Defendants:

8. Defendant J. L. Ray is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

9. Defendant J. B. Griffith is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

10. Defendant D. A. Nichols is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

11. Defendant James L. Spencer is the police justice and ex-officio Justice of the Peace of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of the State of Mississippi.

The Factual Situation:

12. On September 13, 1961, Plaintiffs and eleven other Episcopal Clergymen, amongst whom were two members of the Negro race and nine members of the Caucasion race, traveling in a group on a Prayer Pilgrimage, entered in orderly fashion the Continental Trailways Bus Station in Jackson, Mississippi, about 11:30 A.M. for the purpose of continuing their journey from New Orleans, Louisiana, to Detroit, Michigan to the General Convention of their Church. All possessed tickets to Chattanooga, Tennessee at such time. The group entered through a front door of the station, in front of which was a sign stating in substance "White Waiting Room Only -- By order of Police Department."

13. After Plaintiffs and the other Clergymen referred to above entered the station Defendants Griffith and Nichols placed Plaintiffs and the others under arrest, after ordering them to move on and after refusal by Plaintiffs and the others to do so.

14. Thereafter Defendant Ray approached Plaintiffs and told them to move on. Plaintiffs refused to do so and were then placed under arrest by Defendant Ray and taken to the Jackson City jail.

15. At no time was there any unusual gathering, occurrence, or circumstances in or near the vicinity of the bus station at or near the time of the arrest of Plaintiffs nor did any person present, including Plaintiffs, create any disturbance or commit any disorderly acts whatever.

16. Plaintiffs Pierson, Morris, and Breeden were held in jail until Tuesday, September 19, 1961.

17. Plaintiff Jones was held in jail for approximately ten days after the other Plaintiffs were released.

18. Plaintiffs were held, tried, and convicted upon affidavits of Defendant Ray alleging that Plaintiffs "on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there willfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi."

19. Defendant Spencer was the judge at the trial held on Friday, September 15, 1961, without a jury at which trial Plaintiffs were tried and convicted on the affidavits mentioned in paragraph 18, supra, and on the testimony of Defendant Ray. The convictions were based upon violations of Section 2087.5 of the Mississippi Code of 1942, as amended.

20. Plaintiffs Pierson, Morris, and Breeden posted bond and were released from jail on Tuesday, September 19, 1961. Plaintiff Jones posted bond and was released from jail approximately ten days after the other Plaintiffs.

21. The Plaintiffs duly appealed to the Hinds County Court from the Jackson Municipal Court as provided by Mississippi laws. As a necessary consequence of prosecuting their appeals Plaintiffs were required to appear in the Hinds County Court before County Judge Russell Moore for arraignment on October 9, 1961, at which time they pleaded not guilty. Thereafter, on April 10, 1962 Plaintiffs Morris, Pierson, and Breeden were required to return

to Jackson for further purposes of prosecuting their appeals. On May 21, 1962 the trial of Plaintiff Jones was held before Judge Moore. At the end of the prosecution's evidence, at which Defendant Griffith testified, the Court, upon Plaintiff Jones's motion, dismissed the case on the grounds that the evidence showed no violation of law.

Immediately thereafter the City Prosecutor moved the dismissal of charges against the other Plaintiffs and the eleven other Clergymen referred to above, stating that the evidence in the remaining cases was the same as in the Jones case. This motion was granted.

Claim I:

22. Defendants, acting severally and in concert, under color of law and under color of Section 2087.5 of the Mississippi Code of 1942, as amended, and under color of the Constitution, laws, policy, customs and usages of the State of Mississippi dealing with segregation of the Negro race from the Caucasion race, subjected and caused to be subjected Plaintiffs to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States in that Defendants have arrested, convicted and sentenced Plaintiffs to jail and confined Plaintiffs therein for the sole purpose of enforcing the segregation laws, customs, policies, and usages of the State of Mississippi.

23. Plaintiffs have been deprived of their rights, privileges, and immunities as citizens of the United States and of the Several States to travel freely among the States of the United States, to equal protection of the laws, and to due process of law, among other rights, privileges, and immunities guaranteed by the Constitution and laws of the United States. These rights, privileges, and immunities are guaranteed, in particular, by Article I, Section 8, Clause 3, and the 14th Amendment of the Constitution of the United States and laws passed pursuant thereto.

Claim II:

24. Plaintiffs have been intentionally falsely arrested, confined, detained, and imprisoned by Defendants, acting severally and in concert, without legal cause, process, or justification. At no time about the occasion of their arrests did the Plaintiffs commit any acts justifying their arrests by

Defendants Ray, Griffith, and Nichols or their convictions by Defendant Spencer under the section of the Mississippi law with which Plaintiffs were charged with violating, Section 2087.5, or under any of the other laws of the State of Mississippi.

Statement of Damages:

25. Plaintiffs have each been injured and damaged by Defendants' acts against Plaintiffs in the amount of $10,001.00 for each Plaintiff and each Plaintiff has further been forced to expend the sum of approximately $1,000.00 as a direct and proximate result of protecting and defending himself against the acts of Defendants.

Prayer for Relief:

26. Wherefore, each Plaintiff demands judgment against Defendants, jointly and severally, in the amount of $11,001.00, for a total judgment against Defendants of $44,004.00.

27. Plaintiffs request such other and further relief as is just.

28. Plaintiffs demand that Defendants pay the cost of this action.

Carl Rachlin
280 Broadway
New York, New York

William Higgs
Box 4863
Jackson 6, Mississippi

ATTORNEYS FOR PLAINTIFFS

William Higgs
One of the Attorneys of
Record in this cause
and a member of the bar
of this Court.

[1962] [September?]

THE FOLLOWING IS A STATEMENT FROM THE FOUR EPISCOPAL CLERGYMEN WHO FILED SUIT ON SEPTEMBER 10th, IN FEDERAL COURT IN JACKSON, MISSISSIPPI, AGAINST POLICE AND COURT AUTHORITIES.

"We sincerely believe the charges and claims set forth in the Complaint we filed in the United States District Court in Jackson yesterday. It should speak for itself. While we have no personal feelings against the policemen who arrested us, acting undoubtedly with the encouragement and approval of their superiors, we believe them to be culpable for their irresponsible discharge of duty. The judge who sentenced us to a fine of $200.00 and four months in prison bears an even greater responsibility for the frequent and flagrant misuse of statutory law our conviction represented. Acting in concert with other state and local authorities to preserve practices of segregation, he did dishonor to his important office as he judged us guilty with no more of an objective review of charges lodged against us that had been made in hundreds of similiar cases where the circumstances were the same.

"In addition to reasons set forth in the Complaint, we are taking this step for the sake of countless persons who have been arrested on no more grounds than in our case, in Jackson and elsewhere in the South. Most such victims of unlawful arrest have not enjoyed the subsequent acquittal granted us at the county court level. Arrests similiar to ours on breach-of-the-peace charges continue to increase in the South and now must total something in excess of five thousand. It is the new weapon of the dying order to use ostensibly non-racial ordinances, now that it is clear that the old legal barriers will be struck down. Privately even some authorities will admit that the maintenance of Jim Crow is the goal, however capricious the administration of justice becomes.

"We have filed this suit now out of a greater respect for the majesty of the law than has been demonstrated to be held by those officers of the law we have charged and those like them in the Jacksons, Albanys and Baton Rouges of the South. Impartiality in the administration and prosecution of justice must be regained in those areas where a dying way-of-life has become the idol over all other loyalties."

The Rev. James P. Breeden
The Rev. Robert L. Pierson
The Rev. John B. Morris
The Rev. James G. Jones, Jr.

COPY

FROM
WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 650
TELEPHONES FL 3-2711
FL 3-7218

RECEIVED
OCT 1 1962
VLADECK & ELIAS

September 29, 1962

Miss Loryce Wharton, Clerk
U. S. District Court
Jackson, Mississippi

RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315

Dear Miss Wharton:

I am enclosing herewith separate motions to dismiss on behalf of each defendant which you will please file in this action.

Very respectfully yours,

WATKINS & EAGER

BY Thos. H. Watkins
Thos. H. Watkins

THW:mb
encls.
cc: Hon. Carl Rachlin
Hon. William Higgs

COPY

FROM
WATKINS & EAGER
JACKSON 5, MISSISSIPPI

. BOX 650
TELEPHONES FL 3-2711
FL 3-7218

RECEIVED
OCT 15 1962
VLADECK & ELIAS

October 11, 1962

Mr. William Higgs
Attorney at Law
Box 4863
Jackson 6, Mississippi

Dear Bill:

RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315, Jackson

With reference to our recent telephone conversation during which we agreed that these motions would be presented Friday, October 19, I find that I have a conflict on that date and subject to your approval, I am noticing the motions for hearing on Friday, November 2, 1962. If this setting is not convenient with you, please let me know, and we will change the date. I attempted to get in touch with you by telephone today, but you were out of the City.

Trusting that you will let me hear from you, I remain

Sincerely,

Tom Watkins

THW:mb
encls.
cc: Hon. Carl Rachlin

COPY

FROM
WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 650
TELEPHONES FL 3-2711
FL 3-7216

October 11, 1962

Miss Loryce Wharton, Clerk
United States District Court
Jackson, Mississippi

Dear Miss Wharton:

RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315, Jackson

We are noticing the motions in the above styled and numbered case for hearing on Friday, November 2, 1962, and we enclose a copy of the notice which you will please file. We will appreciate your including these motions on Judge Cox's motion docket for Friday, November 2, 1962.

Thanking you, we remain

Very respectfully yours,

WATKINS & EAGER

BY______________________
Thos. H. Watkins

THW:mb
encl.
cc: Hon. Carl Rachlin
Hon. William Higgs

RECEIVED
OCT 24 1962
VLADECK & ELIAS

Box 4863
Jackson 6, Mississippi
October 22, 1962

Hon. William Harold Cox, Chief Judge
United States District Court
Southern District of Mississippi
Post Office Building
Jackson, Mississippi

Dear Judge Cox:

RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315, Jackson

After Mr. Watkins and I agreed on setting the motions in the above case for hearing on Friday, November 2, 1962, I was informed by my doctor yesterday that I had to completely stop working for at least two weeks. Mr Watkins has agreed that the hearing be postponed until further notice. I have told Mr. Rachlin of this also. I trust that this arrangement will be agreeable with Your Honor.

Thank you very much for your consideration in this matter.

Yours sincerely,

WLH

William L. Higgs

WLH:rk
cc: Hon. Tom Watkins
Hon. Carl Rachlin

COPY

FROM

WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 650
TELEPHONES FL 3-2711
FL 3-7219

November 8, 1962

Recd
11/9/62

Miss Loryce Wharton, Clerk
United States District Court
Jackson, Mississippi

Dear Miss Wharton: RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315, Jackson

We are noticing the motions in the above styled and numbered cause for hearing on Friday, November 30th, 1962, and we enclose a copy of the notice which you will please file. We will appreciate your including these motions on Judge Cox's motion docket for Friday, November 30, 1962.

Thanking you, we remain

Very respectfully yours,

WATKINS & EAGER

BY Thos. H. Watkins
Thos. H. Watkins

THW:mb
encl.
cc: Hon. Carl Rachlin
Hon. William Higgs

Copy

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

RECEIVED
NOV 19 1962
WLADECK & ELIAS

November 16, 1962

Mr. James Farmer, National Director
Congress of Racial Equality
38 Park Row
New York 38, N. Y.

Dear Jim:

At the meeting of our Board of Directors here in Atlanta on October 25-27, 1962, "...It was moved and voted that $1,000.00 be given to C.O.R.E. in gratitude for assistance rendered..." during the Prayer Pilgrimage in September of 1961 and during the aftermath leading to trials in May of 1962. This is an allocation from The Prayer Pilgrimage Appeal Fund, the unused portions of which are now being distributed. Accordingly, I am enclosing a check to C.O.R.E. from that Fund in the amount of $1,000.00.

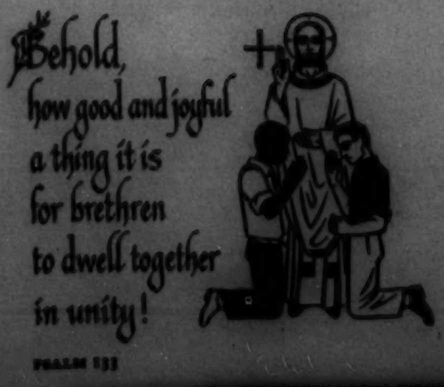
While there have been a number of contacts between our two organizations and ways in which you all have helped us, obviously this expression of our appreciation is in particular regard to the legal services given by Carl Rachlin in September, 1961, and in preparation for and presence at the trials that began and concluded on May 21st of this year. As such, I recognize that this is only a token expression of appreciation and wish that it might be more.

You undoubtedly know that Carl is now helping four of the Pilgrimage clergy, including myself, in the prosecution of the suit in Jackson about which you and others made statements back in September. A hearing is scheduled in Jackson on the 30th of this month. We also have Bill Higgs of Jackson representing us with whom we have made financial arrangements. I have pointed out to Carl that we must similiarly see that at some time he is properly reimbursed for his services. In the meantime we will, naturally, cover all expenses connected with travel, etc., in the prosecution of the matter.

Carl, Gordon Cary and Marvin Robinson were here today and I enjoyed accompanying them to see the regional Howard Johnsons' manager. I may be able to help some in terms of contacts amongst other groups here in the city which are concerned with the situation.

Yours faithfully,

The Rev. John B. Morris
Executive Director



cc: Mr. Carl Rachlin

John Moores file

Box 4863
Jackson 6, Miss.
Nov. 16, 1962

RECEIVED
NOV 19
VLADECK & ELIAS

Hon. Carl Rachlin
280 Broadway
N. Y. , N. Y.

Dear Carl:

Enclosed are separate motions designed to attempt to get a default judgment. As we discussed earlier, our chances are not good that Cox will give us one, but it should put the other side on the defensive. The first motion is addressed to the clerk and asks for an entry of default, which we have a right to under the clear language of Rules 55a and 12, particularly 12a. The second motion is one to the Court for a default judgment under Rule 55(b)2. Since the Court has wide discretion in all of these matters, our chances of success are not too good.

As to Watkins' motions: It seems clear that they will prevail on the motion for security for costs, which should be no real loss to us. (Cyclopedia of Federal Procedure, Sections 38.47, 38.48, and 38.49; Vaughan v. First National Bank of Greenville, Mississippi, 218 F2d 804 (5th Cir.). However, on their motions to dismiss the complaint as to each of the defendants or to drop each of them from the action, I believe that we should prevail because of the clear language of the Rules on both points. For one thing, misjoinder is not a ground for dismissal. (Cyclopedia of Federal Procedure, Section 20.19, p. 351, is just one of many authorities on this point; the best one is the straight language of Rule 21.) The question then becomes one of severing the claims for separate trials or of dropping defendants under Rules 20 (b) or 21. Again the clear language of Rules 18(a) and 20 (a) support our position , as does Moore's Federal Practice, Sections 18.04(1) and(3), 20.06 and 21.03. (I have my own set of Moore's that we can take with us to court.) However, Rule 42(b) gives the Court further discretionary power to have separate trials. In sum, Cox has the power to rule against us and be completely within the law; but the Rules are certainly in our favor on the dismissal or dropping point.

I will call you Monday afternoon or Tuesday morning to discuss the case with you.

Yours,

Bill

COPY

FROM

WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 650
TELEPHONES FL 3-2711
FL 3-7219

RECEIVED
NOV 20 1962
WADECK & ELIAS

November 19, 1962

Miss Loryce Wharton, Clerk
U. S. District Court
Jackson, Mississippi

Dear Miss Wharton:

RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315 - Jackson

We enclose herewith a motion to dismiss on behalf of the defendant, James L. Spencer, which you will please file. Same is noticed for hearing on Friday, November 30, 1962, and we will appreciate your indicating same on Judge Cox's motion docket for that date.

Thanking you, we remain

Very respectfully yours,

WATKINS & EAGER

BY
Thos. H. Watkins

THW:mb
encl.
cc: Hon. Carl Rachlin
280 Broadway
New York, New York
Hon. William Higgs
P. O. Box 4863
Jackson 6, Mississippi

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 Forsyth Street, N. W. Atlanta 3, Georgia

November 24, 1962

TO THE PRESS:

This coming Friday, November 30th, at approximately 9:00 A.M., there will be hearing on the suit brought by four Episcopal clergymen against certain Jackson, Miss., police authorities in the Southern District Court in Jackson. It will be on motions of defendants to dismiss, etc. The attorneys in the case, Mr. William Higgs of Jackson, and Mr. Carl Rachlin of New York, will appear in behalf of the plaintiffs.

The plaintiffs will not be present for the hearing. Their statement on the suit, in addition to what the Complaint itself says, is enclosed herein. Also enclosed are statements by various leaders in the Civil Rights movement on the suit which have not yet been covered in any press stories. A further interpretative reprint on the suit is enclosed for your information.

We find it interesting that House Bill No. 6 of the 1st Extraordinary Session of 1962 of the Legislature of the State of Mississippi establishes procedures for the defense of municipal employees and for the payment of any fines that may be levied against them. I am sure the defendants in our complaint deserve the full backing of the City of Jackson.

At the time of the hearing I shall be on a trip in another part of the country and trust that the statement made by all of the plaintiffs is sufficient should there be need for public comment on our action. However, my office can assist in locating me if it is necessary.

Yours faithfully,

John B. Morris

The Rev. John B. Morris
Executive Director

Episcopal Society for Cultural and R al Unity
5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA

RECEIVED
NOV 26 1962
VLADECK & ELIAS

Hi —

I'll see you in NYC the first of the week.

Good luck in Jackson — John

Behold, how good and joyful a thing it is for brethren to dwell together in unity!

COPY

FROM

WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 650
TELEPHONES FL 3-2711
FL 3-7218

RECEIVED
DEC 5 1962
VLADECK & ELIAS

December 3, 1962

Miss Loryce Wharton, Clerk
United States District Court
Jackson, Mississippi

Dear Miss Wharton:

RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315 - Jakson

We are noticing the motions in the above styled and numbered cause for hearing on Friday, December 21, 1962, and we enclose a copy of the notice which you will please file. We will appreciate your including these motions on Judge Cox's motion docket for Friday, December 21, 1962.

Thanking you, we remain

Very respectfully yours,

WATKINS & EAGER

BY Thos. H. Watkins
Thos. H. Watkins

THW:mb
encl.
cc: Hon. Carl Rachlin
Hon. William Higgs

COPY

FROM

WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 650
TELEPHONES FL 3-2711
FL 3-7216

RECEIVED
DEC 7 1962
VLADECK & ELIAS

December 5, 1962

Miss Loryce Wharton, Clerk
United States District Court
Jackson, Mississippi

Dear Miss Wharton:

RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315 - Jackson

At the request of counsel for the plaintiffs, we are re-noticing the motions in this matter for hearing on Friday, January 4, 1963, and we enclose a copy of the notice which you will please file. We will appreciate your including these motions on Judge Cox's motion docket for Friday, January 4, 1963.

Thanking you, we remain

Very respectfully yours,

WATKINS & EAGER

BY Thos. H. Watkins
Thos. H. Watkins

THW:mb
encl.
cc: Hon. Allen C. Thompson
Hon. James L. Spencer
Hon. Carl Rachlin
Hon. William Higgs

RECEIVED
DEC 13 1962
VLADECK & ELIAS

December 12, 1962

The Rev. John B. Morris
Executive Director
The Episcopal Society for Cultural and Racial Unity
Room 200, 5 Forsythe Street, N. W.
Atlanta 3, Georgia

Dear John:

You may or may not have received by now the acknowledgement that usually goes out of our office in response to special contributions. In any case I do want to send you this personal note of thanks on behalf of CORE for the contribution from the Episcopal Society for Cultural and Racial Unity in the amount of $1,000.00. The belatedness of this letter is no indication of the measure of our appreciation.

Carl Rachlin has been most enthusiastic and happy about his association with you and your colleagues. For him it has been a real labor of love. He has been inspired, as have all of us, by the spirit and dedication shown in the Prayer Pilgrimage.

We are grateful, needless to say, for your generous contribution to our efforts. Please give CORE's thanks and mine to your Board of Directors.

Cordially,

James Farmer
National Director

cc: C. Rachlin

JF/js

cR

RECEIVED
JAN - 7
VLADECK & ELIAS

January 4, 1963

Dear John,

Enclosed are the copies of the various motions and of their answer. I have omitted the certificates of service, which should be of no interest to you.

As I mentioned over the phone, all of the enclosed motions were denied, except for the Defendants' motion for security for costs and for their motion to dismiss as to Spencer, which motion Cox said he felt he would deny but has called on us for briefs on it. We now have 20 days in which to file these briefs.

After checking with Carl about our fee procedure, we decided to follow your suggestion and for me to send him copies of all statements.

To date I have worked four hours over the $1000 advance, in addition to the day in court. This amounts to 4 times $15, plus $150, for a total of $210.

I will call you Monday about plans for working on the brief for Cox on the motion to dismiss Spencer. I briefly discussed it with Carl today; he wants me to advise you as to co[illegible].

Yours,

Bill

William L. Higgs

COPY

FROM

WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 680
TELEPHONES FL 3-2711
FL 3-7218

RECEIVED
JAN - 7

January 4, 1963

VLADECK & ELIAS

Honorable William Higgs
P. O. Box 4863
Jackson 6, Mississippi

RE: Robert L. Pierson, et al v. J. L. Ray, et al - Civil Action No. 3315

Dear Bill:

I am enclosing three orders covering the matters ruled on by Judge Cox today which I trust you will find in proper form. I am not submitting an order at this time on the motion of Judge Spencer to dismiss because of judicial immunity in view of the fact that Judge Cox has allowed additional time within which to submit briefs.

With kindest regards and best wishes, I remain

Sincerely,

Tom Watkins

THW:mb
encls.
cc: Hon. Carl Rachlin
280 Broadway
New York, New York

~~Copy~~

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

RECEIVED
JAN 10 1963

January 9, 1963

Mr. William L. Higgs
Box 4863
Jackson 6, Mississippi

VLADECK & ELIAS

Dear Bill:

I'm waiting now to get word back from you on dates suitable for all for the deposition-taking process. I'm sorry we have so many busy people but this is to be expected. I trust it'll work out satisfactorily.

Pursuant to your letter of January 4th, please find enclosed our check in the amount of $210.00. From your letter I understand that this represents charges for legal services for "four hours over the $1,000 advance, ih addition to the day in court."

Let me review what I mentioned on the telephone the other night about the financial situation. You will recall that you estimated for me before we initiated proceedings that it could cost between three and six thousand dollars if we had to take our case to the Supreme Court. Wanting to provide for the maximum need I asked our Board of Directors to allocate this sum from the assets of the Prayer Pilgrimage Appeal Fund which were distributed at the last Board meeting. This was done and the $6,000.00 sum made available. The balance of Appeal Fund monies have been otherwise allocated. This means thqt we are totally dependent on the sum set aside for this proceedings It is a corporate action by the four plaintiffs, which is really representative for the whole group and, indeed, the organization and beyond. We have promised the individuals involved that no funds would be required of them and that we would cover their travel and other expenses connected with being plaintiffs.

Here follows a summary of expenses to date:

William L. Higgs, legal services..................	$1,210.00
Travel for lawyers & plaintiffs	834.14
Telephone...	372.74
Office expenses: paper, printing, etc.............	260.36
Total to date.....	$2,677.24

This means that we have $3,322.76 left to carry the proceedings along, including any necessary appeal to the Fifth Circuit and the Supreme Court. I am not competent to judge how we're doing in terms of what will be demanded for these further steps if they become necessary.

As I said on the telephone the other night we would simply have to drop the charges if it were not possible to pursue them within the context of our available funds. So I must depend on your advice during the course of things as to whether this will be necessary and when, if necessary, it should be done with a minimum of embarassment and legal entanglements for all. Obviously I hope this will not be necessary and rest assured that I want us to pursue this case vigorously within our financial limits. In other words, I'm not pinching pennies with regard to your going to Boston or any other suggested step if we can carry the whole thing through on what we have. Perhaps I'm forced to put the whole matter so starkly because ESCRU is faced with its own financial crisis presently, necessitating even that I dismiss my secretary a few months ago....so thus the sloppy typing.

Faithfully,

The Rev. John B. Morris
Executive Director

✓ cc: Carl Rachlin

P.S. Thanks for the copies of legal papers. I
await the news clippings now with interest.

THE FOLLOWING DOCUMENTS ARE THE
BEST AVAILABLE.

Morris
✓
Files

RECEIVED
JAN 2
VLADECK & ELIAS

Jan. 24, 1963

Rev. John Morris
ESCRU
5 Forsyth Street
Atlanta 3, Ga.

Dear John,

Enclosed is a copy of the brief that the students and I prepared. It's short, but I believe it does the job so far as the law is concerned. I just hope Cox thinks so too.

As we agreed earlier, the costs would consist of a one-way trip to Boston and my time spent in the library on the memorandum. This amounts to $195 as follows:

one-way to Boston	$90	
7 hours @ $15 Hr.	$105	
	$195	total

X As I mentioned to you earlier, I gathered from talking to Cox that he felt that he had been a bit unreasonable in requiring $2000 bond. (I wish he had felt this way in the beginning.) Therefore, he may be amenable to a request from Carl to reduce the amount or even to accept a certificate from ESCRU of financial responsibility, as I understand he has with Legal Defense and others.

Yours,
Bill

✓ cc: Carl Rachlin

Syl
You may be interested in the accompanying memo.

[illegible]

Hon. Harold Cox
United States District Judge for the
Southern District of Mississippi
Jackson Division
Jackson, Mississippi

Re: Pierson, et al. v. Ray, et al.

Honorable Sir:

I do not wish to presume upon you and believe the issue of the financial responsibility of the plaintiffs, [illegible] have not as yet been able to obtain a corporate surety, [illegible] are able to provide such security.

Would your Honor consider his order satisfied if we gave a certification of financial responsibility from the Episcopalian Society for Cultural and Racial Unity [illegible] the payment of any costs, should there be any. In the [illegible] if your Honor's answer is yes, may I respectfully [illegible] that Thurston call or contact a [illegible] [illegible] same.

Respectfully yours,

CARL RACHLIN

[illegible]
cc: Thomas Watkins, Esq.
William Kunstler, Esq.

United States District Court
Southern District of Mississippi
Jackson, Mississippi

William Harold Cox
District Judge

January 28, 1963

AIR MAIL

RECEIVED
JAN 29 1963
VLADECK & ELLIS

Mr. Carl Rachlin
Attorney
280 Broadway
New York 7, New York

Dear Sir:

Re: Pierson v. Ray
Civil Action No. 3315

Your suggestion for compliance with the order for cost in the above case would not be acceptable. Your clients may deposit with the Clerk one thousand dollars in cash and when that amount is used they may deposit a like amount of one thousand dollars and when that is used they may deposit the additional five hundred dollars in cash as a compliance with the former order of the court.

Yours very truly,

Harold Cox

WHC:afc

cc: Mr. Thomas H. Watkins
Mr. William L. Higgs
Clerk of the Court

RECEIVED
JAN 29 1963
VLADECK & ELIAS

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 Forsyth St., N. W.   Atlanta 3, Ga.   525-7975

TO: The Rev. James Breeden
The Rev. James Jones
The Rev. Robert Pierson
William Higgs, Esq.
✓Carl Rachlin, Esq.

1-28-63

Gentlemen:

Forgive the carbon copy means of communicating with you....but I am without secretarial assistance and this saves time!

This is regarding our day for taking and giving depositions. (An unhappy word for clerics to deal with!) I've talked with Jim Jones' wife via phone while in Chicago and Bill Higgs tells me he's talked with Jim Breeden re the final adjustments in our schedule. The following is not much different from the last report, and especially as it was to affect Bob Pierson, so I'm writing now instead of using more phone call funds! (Such a time as we've had finding suitable dates!)

THIS IS THE PLAN WHICH MUST NOW BE KEPT TO LEST WE HAVE THE CASE THROWN OUT OR SOMETHING SIMILIAR: We the plaintiffs will be interrogated beginning at 8:00 A.M., on Friday, February 15th, with Pierson as lead off man, I believe. Each in turn will be quizzed, until 2:00 P.M. when it is our turn to begin interrogation of the defendants. We may then proceed into the evening if necessary.

Both because of the early hour, and to permit some conference amongst ourselves - plaintiffs and counsel all - we must arrive in Jackson the evening or afternoon before. I have reserved sufficient space on Delta # 723 leaving Atlanta on Thursday, February 14, at 6:05 P.M., for Breeden, Pierson, Rachlin and myself, assuming that each of these must come via Atlanta. We arrive in Jackson at 7:22 P.M. I must pick up these reservations at the latest on Monday, Feb. 11th. Please let me know whether you will require the space and whether you want me to get the Atlanta to Jackson portion of your ticket. Jim Jones, I hope you can get to Jackson by 7:22 P.M. also so that we can all talk together....let me know if you want space out of Atlanta.

With the possibility of a late night session with the defendants it will be helpful if you can plan to remain over until Saturday morning. It is not required that plaintiffs be there for the interrogation of defendants, but it would be extremely helpful to our counsel. There are at least two early flights to Atlanta on Saturday morning which will connect, I am sure, for favorable flight back to the northeast that day.

Bill....Would you ask Dr. Beittel for me if we could stay at Tougaloo, or would you suggest something else? Can you meet us or shall we get a U-Drive-It?

11 Carl.....I hope you're able to satisfactorily arrange the bonds for costs up there. I leave here on the 30th and will be gone until the 5th if you need me....

To all......Bill advises me that Judge Cox has indicated that Judge Spencer may remain a party in the case at least for the present. So far, so good! Bill had to file a special brief on whether Spencer would be kept in or not......

Faithfully,

John B. Morris

ORIGINAL

AO Form No. 82-Revised
Form approved by
Comp. Gen., U. S.
December 2, 1952

RECEIPT FOR PAYMENT

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
OFFICE OF THE CLERK

RECEIVED FROM Rev. John B. Morris
c/o Carl Rachlin, Attorney
280 Broadway, New York, N.Y

Place Jackson

DOC. NO. 3313-Civ

Division

DATE 1/30/1963

CASE OR PROCEEDING Pierson et al vs Ray

ACCOUNT	AMOUNT	ACCOUNT	AMOUNT
Clerk's Filing Fee		Registry Cash Bail	
Bankruptcy Filing Fee		Tender	
Referee's Sal. and Exp. Fund		Bond for Costs	1000.00
		Restitution	
Miscel. Earnings Admission of Attorney		Other Moneys Civil Judgment	
Copy-Compare		Costs	
Certificate		Fine	
Passport		Naturalization Decl'n Pet'n No.	
		Total ▶	1000.00

Cash ☐ Check ☐ MONEY ORDER ☒

DEPUTY CLERK E Mathison

32756

PRINTED BY THE STANDARD REGISTER COMPANY, U. S. A.

WATKINS & EAGER
ATTORNEYS AND COUNSELLORS AT LAW
800 PLAZA BUILDING
JACKSON 5, MISSISSIPPI

WILLIAM H. WATKINS
1895-1959
PAT H. EAGER, JR.
THOMAS H. WATKINS
ELIZABETH HULEN
WM. E. SUDDATH, JR.
SHELBY R. ROGERS
WM. F. GOODMAN, JR.
JAMES A. BECKER, JR.
WM. M. CHAMPION
JOE W. HOBBS

P. O. BOX 650
AREA CODE 601
FL 3-2711
FL 3-7218

March 18, 1963

CERTIFIED
RETURN RECEIPT REQUESTED

Carl Rachlin, Esquire
280 Broadway
New York, New York

RE: Robert L. Pierson, et al v. J. L. Ray, et al
Civil Action No. 3315

Dear Mr. Rachlin:

I am enclosing the original and three copies of the depositions of Robert L. Pierson, James P. Breeden, James G. Jones, and John B. Morris taken by the defendants in this office February 15, 1963. Please have each of your clients sign the original of his deposition before any notary public at the place provided at the conclusion of same. You will note that photostatic copies of the exhibits are attached to the originals and all copies of the depositions of Robert L. Pierson and John B. Morris. After these originals have been signed by the witnesses, please return them to me in order that they may be filed with the Clerk of the Court. These depositions totaled 183 pages, and the defendants are being charged this amount for same.

I also enclose three copies of the depositions of the defendants, J. L. Ray, J. D. Griffith, and D. A. Nichols, and James L. Spencer, as taken by the plaintiffs in this office on February 15, 1963. The originals of these depositions have been signed by the witnesses and have been filed with the Clerk of the Court. These depositions totaled 178 pages, and I am enclosing statement of Miss Mildred Baker, the reporter, charging this amount to the plaintiffs. I trust that you will forward Miss Baker a check for that amount at your convenience.

I plan to file a motion to require the plaintiff, John Morris, to produce copies of all communications between

ESCRU and the other plaintiffs with reference to the pilgrimage, together with copies of all statements or communications issued by ESCRU to Episcopal churches or their officials in explanation of the pilgrimage or the suit filed by the plaintiffs. It occurs to me that you would be willing to have Reverend Morris furnish me this information without the necessity of a formal motion and hearing thereon. Please let me have your reaction to this request.

With kindest personal regards and best wishes, I remain

Sincerely,

Tom Watkins

THW:mb
enclosures

WATKINS & EAGER
ATTORNEYS AND COUNSELLORS AT LAW
800 PLAZA BUILDING
JACKSON 5, MISSISSIPPI

WILLIAM H. WATKINS
1895-1959

PAT H. EAGER, JR.
THOMAS H. WATKINS
ELIZABETH HULEN
WM. E. SUDDATH, JR.
SHELBY R. ROGERS
WM. F. GOODMAN, JR.
JAMES A. BECKER, JR.

WM. M. CHAMPION
JOE W. HOBBS

P. O. BOX 650
AREA CODE 601
[illegible]-2711
FL 3-7218

RECEIVED
APR 1 1963
VLADECK & ELIAS

March 29, 1963

Carl Rachlin, Esquire
Attorney at Law
280 Broadway
New York, New York

RE: Pierson, et al v. Ray, et al
Civil Action No. 3315
U. S. District Court - Jackson

Dear Mr. Rachlin:

This case has been set for trial in the U. S. District Court for Monday, May 13, 1963, and we are making our arrangements to try the case at that time.

In view of this setting, please return the originals of the depositions of the plaintiffs at your earliest convenience.

With kindest personal regards, I remain

Sincerely,

Tom Watkins

Tom Watkins

THW:mb

[illegible] 18, [illegible]

The Rev. Robert L. [illegible]
[illegible] Road
White Plains, New York

The Rev. James P. Breeden
67 St. James Street
Roxbury
Boston, Massachusetts

The Rev. James G. Jones
St. Leonard's House
2100 [illegible] Avenue
Chicago 12, Illinois

The Rev. John B. Morris
Episcopal Society for Cultural
and Racial Unity
[illegible] Street, N.W.
Atlanta [illegible], Georgia

Dear Friends:

I am enclosing herewith the original of the [illegible] you gave recently in Jackson, Mississippi. [illegible] possible and it is [illegible] it without a notary public [illegible]

As of this moment, our trial is scheduled for [illegible] in September.

If there are any questions or [illegible] to call me.

Sincerely yours,

[illegible]

CR:mg
encl.

April [illegible]

Leonard Rosenthal, Esq.
[illegible] East Capital
Jackson, Mississippi

Dear Len:

As promised to you on the telephone, I enclose copies of the depositions of

Plaintiffs
Robert L. Pierson
John R. Morris
James P. Breeden
James G. Jones, Jr.

Defendants
J. L. Ray
J. D. Griffith
D. A. Nichols.
James L. Spencer

Please read these as quickly as possible and then call me collect. We will then arrange to meet either in Atlanta or New York [illegible] begin the actual preparation for the trial.

One thing that we must be certain about is that we subpoena the records from Judge Moore's Court in sufficient [illegible] that there is no opportunity for them to say that we gave insufficient notice for the records to [illegible].

I also would like you to begin thinking about [illegible] on the issue of damages. As I mentioned to you on the telephone, keeping in mind that Judge Moore [illegible] the conviction [illegible] upon the fact that the prosecution did not make out a [illegible] violation of the statute or to put it another way, there [illegible] no reasonable basis for the arrest.

The secondary question in this regard concerns [illegible] a matter of law the Court must award such damages as are reasonable, such as the necessary trips back and forth in order to answer calendar calls, employment of counsel on appeal. [illegible]

Very truly yours,

CARL RACHLIN

CR:[illegible]

Miss v. Morris

ESCRU 5 Forsyth St., N. W. Atlanta 3, Ga. JA 5-7975

RECEIVED
APR 25 1963
VLADECK & ELIAS

April 24, 1963

TO: Bob Pierson
Jim Breeden
Jim Jones

Gentlemen:

You have received a copy of your deposition from Carl Rachlin. It should be read and any corrections made and returned to Carl as soon as possible after signing before a Notary Public. Corrections can be made in ink in the margin or in spaces between lines and should be initialed. I intend to compare my deposition with the tape recording version (which you all have) and correct accordingly, but this isn't necessary unless you want.

Carl has advised me today that we now have a new attorney-of-record: Mr. Len Rosenthal, a white attorney of Jackson. The Negro attorney whom we had planned on getting has just been cited in contempt of court by Judge Cox before whom our case is to be heard, so this was out.

Carl and his senior partner, Mr. Vladeck, have been consulting considerably about our case and have decided that it might be advantageous for Mrs. Vladeck (also an accomplished lawyer and member of the firm) to argue our case. Carl will most likely be there in consultative capacity. Within the next two weeks, Mr. Rosenthal, Mrs. Vladeck, Carl and I will have a conference to map out general plans.

Carl has advised you that the Court has set trial for our case (It almost sounds like the older day when we were on trial!) for Monday, May 13th. This is it, so we must arrange our schedules accordingly, although recognizing that we are in the hands of the "capriciousness of Miss. justice" which sometimes may go fishing. Any changes to the contrary on dates will be communicated to you immediately, but in the meantime we must set our sights for a return to the capitol city of the Magnolia State. This is the trial which is all important and should be the last time our presence is needed. Any appeals are made on the basis of this record.

I am having Delta Air Lines hold several spaces for their flight #631, leaving Atlanta Sunday, May 12, at 8:20 PM, arriving in Jackson at 9:43 PM. I must pick up tickets for any desiring this space by May 6th. Please let me know in the enclosed return envelope if you want me to book you for this, or, if not, the time and manner of your arrival. With trial early Monday it seems imperative that we get there Sunday evening at the latest.

Space for you and/or Mrs. Vladeck?

Faithfully,
John
John Morris

✓ cc: Carl Rachlin

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

RECEIVED
APR 25 1963
VLADECK & ELIAS

Copy

April 24, 1963

Mr. Leonard Rosenthal
242½ East Capitol Street
Jackson, Mississippi

Dear Mr. Rosenthal:

It was good talking with you today. Let me repeat our thanks and appreciation for your taking this matter in hand as our attorney-of-record.

Enclosed is a round-trip ticket between Jackson and Atlanta, with reservations booked on the Delta flight leaving there on May 1st at 7:55 R.M. and arriving here at 10:58 A.M. I am sending a copy of this letter to Carl Rachlin so that he can note your arrival time. If he is able to get here considerably earlier, it might be that he would want to encourage you to change this departure time to the evening before so that we could all begin our conference here early Wednesday. He's willing to come Tuesday evening if needed

Also enclosed are various flyers that may interest you in terms of some of the background in this suit, and I am enclosing a copy of the Complaint in our suit. As for copies of various motions, the court's rulings, etc., I am not equipped with copies ~~the~~ of them.

Carl has indicated that we could discuss our financial arrangements when you are here next week. I hope this is satisfactory. While our resources for the pursuance of this suit are meager and have been significantly expended in connection with Bill Higgs' work for us, I am sure we can find an arrangement that will be satisfactory to all.

I have advised the other plaintiffs of our date for trial as being May 13th. Any change in this should be reported to us as soon as possible so that plans can be adjusted accordingly.

With respect and admiration for your courage in assuming a responsibility in this case, I remain

Yours faithfully,

The Rev. John B. Morris
Executive Director

✓ cc: Mr. Carl Rachlin

Behold,
how good and joyful
a thing it is
for brethren
to dwell together
in unity!
PSALM 133

April [illegible], [illegible]

The Rev. John Morris
ESCRU
5 Forsyth Street, N.W.
Atlanta 3, Georgia

Dear John:

As we discussed on the telephone the other day, the fee for the services of my firm, for all services performed up to [illegible] and for all services to be performed through the trial [illegible] or any other date if the trial should be adjourned, will [illegible] plus actual disbursements.

As I told you on the telephone, in the event that appeal to the Court of Appeals is necessary, the big expense there will [illegible] printing of the record. Our fee, at this point, will not [illegible] major item. Similarly, this will be true in the event an [illegible] to the United States Supreme Court becomes necessary. The [illegible] of printing the record and the briefs naturally depends upon [illegible] length of time the trial takes and, of course, the length [illegible] brief. The brief itself will not be a very expensive item [illegible] if the trials last only a day or two, the record should [illegible] be expensive.

Regards,

CR:[illegible]

CARL RACHLIN

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA · JACKSON 5-[illegible]

RECEIVED
MAY - 6 1963
VLADECK & ELIAS

May 3, 1963

Mrs. Judith P. Vladeck
Mr. Carl Rachlin
Vladeck and Elias
280 Broadway
New York 7, N. Y.

Dear Judy and Carl:

Enclosed are checks for the tape recorder rental, a check for the travel agency, and $500.00 as half of our retainer for you for the period extending through the trial, if this is correct.

Also enclosed is the original on the motion on Judge Spencer. I've sent a copy to Rosenthal.

I've sent my deposition to Jackson to Rosenthal and advised Pierson and Jones to do the same. You have the one from Breeden and are to forward it, I believe.

We're getting travel plans shaped up. You all will want to advise me whether you want me to get you space from here to Jackson if you should come down and fly over, pursuant to the suggestion in my memo to Carl of April 24th.

Carl called today from Miami enroute to B'Ham. Sorry I couldn't go with him. But I'm rushing here.

It was good meeting you Judy. Whatever you and Carl decide is best for the trial is fine by me.

Faithfully,

John

The Rev. John B. Morris
Executive Director

Behold, how good and joyful a thing it is for brethren to dwell together in unity!
PSALM 133

COPY

FROM

WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 650
TELEPHONES FL 3-2711
FL 3-7218

RECEIVED
MAY 20 1963
VLADECK & ELIAS

May 17, 1963

Honorable S. C. Mize
United States District Judge
Gulfport, Mississippi

RE: Pierson, et al v. Ray, et al
Civil Action No. 3315 - Jackson

Dear Judge Mize:

We submit herewith a judgment for the defendants in accordance with the jury verdict returned in this case Thursday, May 16th. If you will sign this judgment and return same to us, we will see that it is properly filed with the Clerk.

We trust that Mr. Rosenthal will forward to you orders incident to plaintiffs' motions.

With kindest regards, I remain

Sincerely,

Tom Watkins
Tom Watkins

THW:mb
encl.
cc: Hon. Carl Rachlin
Hon. L. H. Rosenthal

May 17, 1963

Dear Tom

I enjoyed trying our case this past week and hope that there will be other occasions when we meet either professionally or socially.

As you know I have been to Jackson quite a few times in the last year and a half. I consider several members of the bar amongst my friends. On this last trip I noticed a substantial difference in the atmosphere which I found somewhat disturbing, because, not only for the jury, I really do like Jackson.

I think too many people are taking comfort in the thought that "outside agitators" are stirring up trouble. Please believe me, I say

[illegible] the [illegible]
only lead to blindness [illegible]
Mayor Thompson is a decent per-
he must not delude himself in
thinking that negro citizens of
Jackson are being stirred up,
they would be satisfied if not for
outsiders. This is not so. Believing
it not so but thinking this way
can only prevent me from [illegible]
the situation squarely. Local
negroes are not satisfied. I am
advised, and want to feel
the Mayor cares about this.
I can appreciate his
[illegible] about outsiders, but I feel
he is making a serious mistake
not setting up a bi-racial com
of Jacksonians.
Please believe my [illegible]
[illegible] good will. I [illegible]
[illegible]

WATKINS & EAGER
ATTORNEYS AND COUNSELLORS AT LAW
800 PLAZA BUILDING
JACKSON 5, MISSISSIPPI

WILLIAM H. WATKINS
1895-1958
PAT H. EAGER, JR.
THOMAS H. WATKINS
ELIZABETH HULEN
WM. E. SUDDATH, JR.
SHELBY R. ROGERS
WM. F. GOODMAN, JR.
JAMES A. BECKER, JR.
WM. M. CHAMPION
JOE W. HOBBS

P. O. BOX 650
AREA CODE 601
FL 3-2711
FL 3-7216

May 19, 1963

RECEIVED
MAY 22 1963
VLADECK & ELIAS

Personal

Honorable Carl Rachlin
Attorney at Law
280 Broadway
New York 7, New York

Dear Carl:

I appreciate very much your letter of May 17, 1963. It was a hard-fought case, and although I did not agree with the position taken by your clients, I admired the energetic and capable manner in which you tried the case.

With reference to the feeling in Jackson, you must realize that our City has been subjected to what we believe to be unjustified assaults and criticism on racial matters. It is rumored that we are now to be subjected to the type demonstrations which have resulted in violence and bloodshed recently in Birmingham. I sincerely hope that it is not true, and I know that a substantial majority of our colored citizens agree with us on this issue. You probably heard Mayor Thompson's television talk while you were in Jackson Monday night, May 13th. I am enclosing a copy of a front page editorial of the Jackson Daily News on the following day quoting a telegram from Honorable Sidney R. Tharp, one of Jackson's outstanding Negro attorneys, to Mayor Thompson. I am also enclosing an editorial which appeared in the May 18, 1963, issue of the Jackson Advocate, Mississippi's largest

Negro newspaper. These, I believe, correctly express the sentiments of the Jackson Negro citizens.

Thanking you again for your letter, and with kindest personal regards, I remain

Sincerely,

Tom Watkins

Tom Watkins

THW:mb
encls.

RECEIVED
MAY 23 1963
VLADECK & ELIAS

[redacted]

Mr. Carl Rachlin
280 Broadway
New York 7, N.Y.

Dear Mr. Rachlin:

I hope you made it to the airport in time. We were delighted to have you pay us a sureptitious visit Thursday evening, look forward to another and more leisurely visit in the future, and ultimately to the day when you can all arrive by the front door.

As a means of possibly hastening that day, I've been wondering what contribution, if any, I might make to having an eventually helpful outcome in Pierson vs. Ray. I'm not concerned with what the Fifth Circuit may do on appeal from the denial of a directed verdict, but rather, assuming you obtain a victory on the issue of principle, with how a damage figure can be obtained from a Southern District of Mississippi jury which will make a victory in principle meaningful. If, as is very likely, the verdict is only $1.00, not only will the victory of principle be hollow, but the confidence in which the Mississippi racist lives, plans, and plots, that no Mississippi jury will ever touch him, will only be confirmed. In fact, if the suit is to have a helpful, as opposed to a harmful effect, you must either get a sizeable verdict, or occasion an important side-effect, unrelated to the size of the verdict. So far, as you must know, they're just laughing over the outcome on Thursday.

I've just taken some time to reexamine the jury exclusion cases dealing with civil juries and it still seems to me, as I mentioned, that this is the only avenue which offers any promise for making the suit worthwhile. With a thoroughly reconstituted jury in the box (composed half of women, who are in general far more religiously oriented than men and more inclined to see peace preserved in an honest and fair manner, and containing a representative number of negroes) with some luck, you might at least have a reasonable hope that a skillful presentation of your case would lead to a moderately sizeable verdict, or a respectable compromise figure. Whether such were to happen in the present case or not, a successful attack on the method of jury composition in use in the Southern District, which should not be difficult, will have wide ramifications. Your suit will leave enough discomfort in its wake to be a victory for the cause that brought the clergymen here: the practical damages they will collect will matter more than monetary damages, and be more fitting perhaps to their role.

I have in mind, as the most effective approach, a suit to enjoin the clerk of court and jury commissioner(s) from systemmatically preparing federal jury lists on which negroes are given only token representation, women equally if not more underrepresented (negro women are almost never called) and which, in fact, make no effort at'tall to include a representative cross-section of the eligible adult population. If you've not looked at Brown v. Rutter, W.D.Ken. 1956, 139 F. Supp. 679, in this regard I think you should. According to the Civil Rights Commission's 1961 Report (#5, entitled Justice) the case is unique. There is no reason to doubt the application of its reasoning to federal civil jury composition; the only question which might arise of importance concerning its applicability is whether the ministers would have standing to seek such an injunction. If the appeal from Thursday's outcome is adverse, then that may eliminate their standing; but as long as they have a valid cause of action venued in the Southern District, then it would seem to me they would have standing to enforce a proper and constitutional mode of jury composition. As a mixed group, they would have standing for a broad-based attack, not limited to negro-exclusion or systemmatic underrepresentation only. The relief to be sought should be a detailed system for composing jury lists which would assure fair representation of the various classes and stratums in the Southern District, and which would eliminate temptations to discriminate in the composition of such lists.

Regarding the obligation resting on federal officers to assure that jury lists are representative and impartial in civil cases I believe you could find adequate support in the two leading civil jury cases involving federal juries: Thiel v. Southern Pacific Co., 328 U.S. 217, 66 S.Ct. 984, and Dow v. Carnegie-Illinois Steel Corporation, 224 F.2d 414, CA3 1955.

An alternative to an injunction suit would be to employ the method used in Thiel and move to strike the panel (assuming a remand for trial on the issue of damages occurs). The relief obtained by such an approach would not be negligible, and the precedent would be useful for later cases, but it would be naive to imagine that the effect of a successful attack on the panel would bring about a basic change in the methods in use for other cases in jury composition. An injunction suit, on the other hand, would bring about a permanent change if successful, and,if the relief were specific as to the method of selection, the impact would be far-reaching upon the litigation in the District and upon the attorneys practicing here.

I find it hard to believe that it would be difficult to carry the necessary burden of proof in an injunction suit, or in an attack on the panel. Very few people have had anything to do with jury lists in the District in recent years. You would only need to go back to 1957 and the situation since repeal of the former qualification that jurors had to be eligible under state law also. Either by requests for admissions, or on direct examination, I think it would be readily apparent that the system now in use offers not even a remote prospect that the lists will be representative. There will be some difficulty wrestling with the large list of exclusions which has been elaborated locally, but I take it from *Thiel* that these extensive and automatic exclusions are in fact unconstitutional. Acting under the court's supervisory authority over the administration of justice, which *Thiel* sets forth, it should be possible for the court (or the 5th Circuit or the Supreme Court) to eliminate or pare down the list of exclusions without the necessity that each one be separately attacked by a litigant within that category.

I think I'probably already gone on at too great length, but I'd like to say just one thing more. I'm not convinced that a recovery in damages is really impossible in Mississippi for an arrest such as that of the ministers. With a truly representative jury, and an astute presentation, a recovery is at least a possibility I would say. Among the techniques on the next go-round I would suggest these, keeping a Mississippi jury in mind: (1) getting across that in other *southern* states the members of the *mob* are arrested, or even where the "outsiders" *are* arrested, they are quickly released, or only fined *nominally*; (2) that clergymen should not be expected to run from trouble, but to express a conscience which is more acute than other people's; in this regard, I think you must accept that most of the jury will be out of sympathy with the reason why the ministers came; the jury will have to be "converted" by an all-out assault, not to agreeing with the ministers, but to understanding why they came; (3) perhaps you'll get some helpful instructions from the 5th Circuit on the proper scope of inquiry and the handling of prejudicial and inflammatory matters; as one means of keeping the worst away from the jury, you might consider waiving summation altogether; I had the feeling it would help to keep Stennett away from the jury; your accent is no match for his.

My wife and I send very warm regards and best wishes; we expect to be in New York sometime in mid or late-summer and hope to find you not-yet-gone or just-back-from your vacation.

Yours very sincerely,

[redacted]

ESCRU 5 Forsyth St., N. W. Atlanta 3, Ga.

RECEIVED
MAY 23 1963
VLADECK & ELIAS

May 21, 1963

TO: Bob Pierson Jim Breeden
Jim Jones Layton Zimmer

Gentlemen:

I trust you've heard (those that had to leave early): We lost to a Mississippi Jury. It wasn't surprising, only depressing that it took them only the time required to sign the documents. We knew that such a case most likely would have to won on appeal.....

Will the three other plaintiffs kindly write Leonard Rosenthal, 242½ East Capitol Street, Jackson, Miss., with copies to Carl Rachlin (Vladeck and Elias, 280 Broadway, New York 7, N. Y.) and me, authorizing him - in consultation with Carl - to proceed with the appeal of the decision in our case. This is important, for it could mean the difference in whether they get him on a trumped up "barratry" charge as a means of removing him from the picture.

My understanding of next steps is that our appeal goes to the Fifth Circuit in New Orleans. If heard by that court, the case will be argued by lawyers only in New Orleans or Atlanta, etc. If we won, then the amount of damages would be set by another Mississippi court following some sort of trial again.....but the legal principle, which is what's important, would have been settled. At that time I guess we'd have to return to Jackson, but this could be late this year or next year.

We are going to run over the $6,000.00 set aside for the suit, so don't turn down any offers of help should they come your way..... In the meantime, however, send me your ~~xx~~ voucher forms for reimbursement for expenses in connection with your trip to Jackson. (Zimmer remember to deduct $5.00 from total as advanced to you, and Breeden similiarly for $20.00)

Jim Breeden and I remained through the verdict late Thursday afternoon, put Carl on a plane that night, and then saw several people in Jackson before departing on Friday for Montgomery where we visited the Freedom Walkers in the state prison before going on up to Birmingham for a night. Jim stayed on until today, talking with the bishop, various clergy, leaders in the movement, etc. He was turned away from one of our parishes on Sunday (St. Mary's in the Highlands), though wearing clericals and alone. I'm meeting him at the airport shortly today briefly between planes. This was the kind of person-to-person effort we should do more in places like Birmingham.

You will enjoy reading the enclosed transcription of notes made in the court room by Mrs. Dan Berner, 1313 Shalnutt Dr., Forest Park, Ga., who is an ESCRU mem- ~~mem~~ ber, a native of Jackson, and who went home so she could come to the trial. She wrote this out chiefly for the benefit of Mrs. Crowley here at the office where she does volunteer work almost every week and for my wife, Patsy. I've asked her permission to send you copies.

Faithfully,

John Morris

cc: Carl Rachlin

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

May 21, 1963

RECEIVED
MAY 23 1963
VLADECK & ELIAS

Mr. Carl Rachlin
Vladeck and Elias
280 Broadway
New York 7, N. Y.

Dear Carl:

It was a memorable week in Jackson. Thank you for all that you did. Your handling of the case was superb. Now on to New Orleans and, hopefully, a reversal.

Enclosed are letters to Len, one being a letter authorizing him, in consultation with you, to proceed with the appeal. I am sending him the second $150.00 of his fee now too, as, likewise, I am enclosing our second $500.00 to Vladeck and Elias too.

We will depend on you to work out a satisfactory future basis with Len, as well as for yourself.

Also enclosed is a check and invoice for your ticket to Jackson. Most likely you all will have other expenses to bill us for, such as the motel, meals, etc.

Finally, enclosed is a copy of a memo to the other plaintiffs asking that they write Len, with copies to you and me.

Jim Breeden and I visited the walkers at Kilbey Prison in Montgomery on Friday and then went up to Birmingham where Jim remains doing a job of personal reconciliatory work... ...calling on the white moderates in the Church. On Sunday he was refused admission at a white Episcopal Church, and was wearing clericals at the time and by himself!

I have a few trips here and yon in the next several weeks, but stop by for a visit at home or at the boat if your schedule brings you down to see the walkers, etc.

Faithfully,

John

The Rev. John B. Morris
Executive Director

Behold, how good and joyful a thing it is for brethren to dwell together in unity!
PSALM 133

Copy

RECEIVED
MAY 23 1963
DECK & ELIAS

May 21, 1963

Mr. Leonard Rosenthal
242½ East Capitol Street
Jackson, Mississippi

Dear Leonard:

Enclosed is my letter authorising you and Carl to begin the process of appealing the decision in the case.

Also enclosed is a check for $31.50 reimbursing you for copies of documents you obtained for us, as well as a check for $150.00 as the second half of our retainer fee for you through the period of the trial. I will depend on Carl to work out satisfactory future arrangements with you in our behalf.

It was quite a week in Jackson and somewhat fascinating to a layman in law as myself. I must say that I am depressed that it took the jury such a short time to arrive at its verdict, but not surprised at the outcome. All of your good work and assistance in the case are much appreciated. It was evident to me that you were of considerable help to Carl in the course of the trial, and he himself has expressed much satisfaction in working with you.

Between the two of you I hope you will keep us posted on developments regarding our appeal...when it gets filed and may be heard, etc.

Finally, I hope the pressures on you resulting from your working with us are not insurmountable.

Faithfully,

The Rev. John B. Morris
Executive Director

cc: Carl Rachlin

Copy

RECEIVED
MAY 23 1963
VLADECK & ELIAS

May 21, 1963

Mr. Leonard Rosenthal
242½ East Capitol Street
Jackson, Mississippi

Dear Leonard:

The three other plaintiffs and I desire to appeal the adverse decision of the court in our suit against Judge Spencer and the police authorities and ask that you and Carl Rachlin take whatever steps are necessary pursuant to this. This is my personal authorization to you to proceed, in consultation with Carl. You will hear similiarly from the other three plaintiffs.

Faithfully,

John B Morris

The Rev. John B. Morris
Executive Director

✓ cc: Carl Rachlin, Esq.

RECEIVED

MAY 24 1963

VLADECK & ELIAS

L. H. Rosenthal
242½ East Capitol Street
Jackson, Mississippi

Honorable S. C. Mize
United State District Judge
Gulfport, Mississippi

RE: Pierson et al. v. Ray, et al.
Civil Action No. 3315 - Jackson

Dear Judge Mize:

We submit herewith an Order overruling the motion for a new trail of the Plaintiffs in accordance with your ruling in open Court on May 16th, 1963. If you will sign this order and return it to me, I will see that it is properly filed with the Clerk.

Yours truly,

L. H. Rosenthal

L. H. Rosenthal

LR/fr

enc: 1

CC: Hon. Tom Watkins
Hon. Carl Rachlin

RECEIVED
MAY 31 1963
VLADECK & ELIAS

May 24, 1963

Mr. Leonard Rosenthal
242½ East Capitol Street
Jackson, Mississippi

Dear Mr. Rosenthal:

Many thanks to you for the help you offered us in our attempt to get a fair judgement in Jackson. It is easy for us to overlook or underestimate the importance of your identification with our case, both as regards the tremendous personal sacrifice to you and your family, but also the witness to the community which you make by your action. I, for one, am extremely grateful to you for all this and for the extremely helpful legal assistance you gave us. I know that Mr. Rachlin is equally grateful to you for this.

It is too bad, but not surprising, that we lost the jury trial. I trust that an appeal will be made to a higher court, and I authorise you to proceed with an appeal of this decision.

Again, thanks, and I hope all goes well with you.

Sincerely,

(The Rev.) Robert L. Pierson

RLP:lb
Copy to: Mr. Carl Rachlin
Mr. John Morris

RECEIVED
JUN - 3 1963
VLADECK & ELIAS

L. H. Rosenthal
Attorney at Law
242½ East Capitol St.
Jackson, Mississippi
May 27, 1963

Hon. Carl Rachlin
Counsellor at Law
280 Broadway
New York 7, New York

Re: Pierson, Et Al.
Vs. Ray, Et Al.

Dear Carl:

I would like to call your attention to the fact that all the necessary orders were entered in the above case on May 21, 1963. If we are going to pursue an appeal in this case it is necessary that we file a notice of appeal by June 20, 1963. If there is something in this regards that you wish me to do please let me know.

I would like to once again say that it was a pleasure and great honor to have associated with you on this case. I am sorry that I could not do more to help you, but you may feel assured that it was I who gain the most from the case - knowledge, experience, and the opportunity to witness a very fine attorney at work.

Best wishes,

L. H. Rosenthal

L. H. Rosenthal

LR/fr

[1963]

The Rev. Robert L. Pierson

RECEIVED /26
MAY 31 1963
VLADECK & ELIAS

Carl—

I wasn't terribly surprised to hear of the outcome. Many thanks to you and Len for the masterful attempt. Maybe we'll win the next step.

Regards,

R

Jackson
5/27/63

Dear Mr. Rachlin,

I presume you've already seen this story, probably in a longer version. It may be of interest that it appeared on page one of the Sunday morning Jackson Daily News & Clarion Ledger yesterday. I didn't hear that portion of the trial which had to do with the Daily Worker article, and so I don't know how, from a jury-influence standpoint, you handled it, apart from the motion to exclude and for a new trial. Perhaps in a second trial it might be well to go into these things actually with thoroughness; insofar as damages are concerned, as I've said before, the jury would have to be first schooled in the scriptures, and well and successfully schooled, to change the attitude toward "meddlers" it will undoubtedly start with. The positions taken by the Methodist and Presbyterian Churches, the latter including the Southern Presbyterian Church, would be even more pursuasive to a local jury (as perhaps half its members would be likely to belong to one or the other faith). I imagine Leonard can assemble any local material that would be useful so I'll confine myself to this seditious idea, which perhaps is only impractical.

Sincerely,

Ed

RECEIVED
MAY 29 1963
VLADECK & ELIAS

11 Akron Street
Roxbury 19, Mass.
May 31, 1963

RECEIVED
JUN - 3 1963
VLADECK & ELIAS

Mr. Leonard Rosenthal
242½ East Capitol Street
Jackson, Mississippi

Dear Mr. Rosenthal:

I here-by authorize you, in consultation with Mr. Carl Rachlin, to proceed with the appeal of the decision in my case. This confirms in writing the verbal agreement made on May 16, 1963.

Thanks for the work you have done thus far. It is good that you are there in Jackson, especially in these creative times. Judging from the news, you are probably finding plenty to keep you occupied right now.

Greetings to your family.

Yours truly,
James P. Breeden (Rev.)

cc. John Morris
Carl Rachlin

Mr. Edward Wright
[illegible] Memphis Street
Jackson, Mississippi

Dear Ed:

Thank you for your very interesting letters. I refrain from commenting on them at this time but look forward to discussing them with you in the near future.

Regards to your wife and lovely baby.

Sincerely,

[illegible]

[1963] 1 May 15

Thoughts on the Trial......

I DON'T UNDERSTAND......

This is a Federal Courtroom. It is located in the 'deep south' but it is a part of the Federal Judicial System. A mural covers the wall behind the judges' bench. Dated 1938, this mural shows a man, the protector of his wife, children and old mother, and a judge in a long black robe smiling benevolently at them. To the right a group of men study blueprints and construct a building. To the left a group of men and women are picking and weighing cotton. The people wear modern dress, the apparel of 1938. The judge, the family, the planners, and the builders are all white. The ones picking cotton are Negroes. This is no romantic picture of the ante-bellum south; this is 1938. I hate that Federal Mural!!

In this courtroom today, May 15, 1963, four men, priests of the Episcopal Church, have brought suit against certain officials of the City of Jackson, charging they were falsely arrested. Their supposed crime? As a bi-racial group they attempted to dine in a bus station restaurant.

On this Wednesday afternoon, the trial is interrupted for a few minutes; a young man is present, who has completed the necessary requirements, and is ready to swear his allegiance to the United States of America so that he may become a citizen. What wonderful words the oath contains! After administering the oath, the Judge speaks informally to him and tells him he now shares all the burdens of citizenship and is entitled to all the rights and privileges that are guaranteed to natural born citizens as provided by the Constitution of the United States. The Judge welcomed the young man into citizenship and warmly [illegible] situation. This new American [illegible] restaurants if he desires [illegible] areas where segregation because of race exists, and I am not aware of it? When I lived in Jackson I remember that I thought separation of the races was sinful; On no occasion did I attempt to follow up my beliefs with action. I can remember no occasion where I felt personally involved. How ashamed I am! How long must our fellow Americans wait for each of us to feel this discrimination and know we are personally involved?

How can any Negro American live anywhere in our country and not be bitter?

Some visitors to the [illegible]:
A group of Negro ministers from Jackson.
[illegible], Chairman of the Mississippi
[illegible] Committee.
Dr. [illegible], President of Tougaloo College.
The Junior Warden of Saint Andrew's [illegible].
The Minister and Senior Warden of [illegible].
The Reverend Wofford Smith, Chaplain at Ole Miss.
The Reverend Ed King, Chaplain at Tougaloo.
Mrs. Nancy [illegible], Member of Saint Andrew's.

[illegible] and I flew down on the same airplane; we did not [illegible] time. While on the ground [illegible] that it is easy for him to come to Mississippi, then return home, but he realized how hard it is for the people like [illegible] Smith who live there and stand up for what they believe.

In [illegible] it to [illegible]

[illegible] Mississippi.

[illegible]

I stand corrected! During Mr. Watkin's cross-examination of John, he (Watkins) referred to Tougaloo quite a bit, pronouncing it, as I, too, have always done, "Tug-a-loo." John said, "I believe you will find that is correctly pronounced Toog-a-loo." Watkins said, "Well, I've called it Tug-a-loo all my life so if you don't mind I'll continue to call it that." I must admit that I've known the correct spelling of the College's [illegible] name, but I have never [illegible] the correct pronunciation before. From now on whenever I speak of Tougaloo Southern Christian College, I will say "Toog-a-loo".

Descriptions of some trial participants!

Judge Sidney [illegible] is a [illegible] elderly man. His thinning hair is very [illegible]. He has a very pleasant face, and under different [illegible] he might have twinkling eyes. He could easily [illegible] for a Norman Rockwell picture of a grandfather.

Defense Attorney [illegible] is a man approaching middle age and is of [illegible] stature. His hair is very [illegible]. His features are [illegible] [illegible]. Even when he [illegible]

[illegible]

[1963, May]

Sun-n-Sand
MOTOR HOTEL
401 N. LAMAR...JACKSON, MISSISSIPPI
Telephone FL 4-2501

Dear Mr. Rachlin:

If you and the ministers are not leaving this evening and feel so inclined ~~we~~ ~~would~~ perhaps you will pay us a visit.

There will be someone at home after five, if you telephone. the number is 352-8047.

With good wishes,
Mrs. Wright

[illegible]

[illegible]
[illegible]
[illegible]

Dear [illegible]:

Thank you for your kind letter of [illegible]. [illegible] with you and I [illegible] we will handle [illegible] in Jackson [illegible] [illegible]

Please file the [illegible] [illegible]

With kindest regards,

Sincerely,

[illegible]

[illegible]
[illegible]

RECEIVED
JUN 13 1963
VLADECK & ELIAS

L. H. Rosenthal
242½ East Capitol Street
Jackson, Mississippi
June 10, 1963

Carl Rachlin
280 Broadway
New York 7, New York

Re: Pierson, Et al;
vs. Ray Et al.

Dear Mr. Rachlin,

I have this day filed the enclosed notice of appeal along with a check for two hundred and fifty dollars ($250.00) as a cash appeal bond in an effort to satisfy Rule 73 of the Rules of Federal Procedure. In my opinion I have done this. The notice of appeal is taken from Bender's Federal Practice Forms, vol. 4, page 5, form no. 4000. I have been assured by the clerk that a cash bond in the form of a check is sufficient to satisfy the rules.

Today I will make a formal written request to the court reporter for an official transcript of the trial. A copy of said request will follow this letter.

If you find that I have made an error in the notice of appeal or the bond or the request to the court reporter please notify me immediately so that I may correct the mistakes.

As you know we now have 40 days including today to file a copy of the record with the Circuit Court and to get this case docketed with said Court. This seems to be our next step in taking the appeal. I will be happy to attend to these details if you desire me to do so. Also I will be happy to perform anyother services in this case that you wish me to.

Your friend,

L. H. Rosenthal

L. H. Rosenthal

LR/fr

Enc: 1
CC: John B. Morris

RECEIVED
JUN 12 1963
VLADECK & ELIAS

United States District Court
SOUTHERN DISTRICT OF MISSISSIPPI
GULFPORT, MISSISSIPPI

CHAMBERS OF
SIDNEY C. MIZE
DISTRICT JUDGE

June 11, 1963

Honorable Carl Racklin
280 Broadway
New York 7, N. Y.

Re: Robert L. Pierson, et al
v. No. 3315--Jackson
J. L. Ray, et al

Dear Mr. Racklin:

Judgment in the above case was entered on May 21, 1963 and your time for filing notice of appeal will expire on June 20, 1963. While you told me orally at the conclusion of the trial to prepare the appeal record, I could not do this until you had filed your notice of appeal and your designation of the contents of the record. I have thought each day that I would hear from the Clerk that this had been done, but having no such information at this time, I thought perhaps I should call it to your attention.

Yours very truly,

Theresa Herbert

(Miss) Theresa Herbert
P. O. Box 610
Gulfport, Mississippi

Leonard Rosenthal, Esq.
[illegible]
Jackson, Mississippi

Dear Leonard:

I enclose a photocopy of a newspaper story which John [illegible] to me. I think this is interesting in light of our [illegible]. Unfortunately, the newspaper story does not give all [illegible] so that I don't know exactly how the [illegible] arose but [illegible] it indicates how the Fifth Circuit [illegible].

Please let me know just as soon as you file the [illegible].

With kindest regards,

Sincerely,

CARL RACHLIN

CR:ew

RECEIVED
JUN 1 [illegible]
VLADECK & ELIAS

Moses
Pierson

L. H. Rosenthal
242½ East Capitol St.
Jackson, Mississippi
June 13, 1963

Court Reporter
P. O. Box 610
Gulfport, Mississippi

Re: Robert L. Pierson, Et al.
Vs. J. L. Ray, Et.al.
No. 3315

Dear Madam:

We filed on June 12, 1963 a Notice of Appeal and a cash appeal bond with the district court. It is now necessary that we obtain a transcript of the proceeding of the trail so that we may be able to file a designation of contents of Record on Appeal.

We would greatly appreciate it if you would at your earliest convenience prepare a transcript of the entire proceeding.

Yours truly,

L. H. Rosenthal

LR/fr

CC: Carl Rachlin

Dear Leonard
How are we
doing on Pierson?
Regards

Morris v Mississippi
[illegible] v [illegible]

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
SOUTHERN DISTRICT OF MISSISSIPPI

COURT TERMS
At Jackson—First Mondays in May and November.
At Vicksburg — Third Mondays in May and November.
At Biloxi — Third Monday in February and First Monday in June.
At Meridian — Third Mondays in March and September.
At Hattiesburg — Second Mondays in April and October.

July 29, 1963

RECEIVED
JUL 30 1963
VLADECK & ELIAS

Mr. Carl Rachlin,
280 Broadway,
New York 7, N. Y.

Dear Mr. Rachlin:

in re: Robert L. Pierson, et al
vs. No. 3315
J. L. Ray, et al

I am writing to you in regard to the transcript of testimony and preparation of the Court of Appeals record in this case. I had partially completed the transcript when we began a very large lawsuit, in which we are having to furnish daily copy. For that reason I have had to lay the transcript aside and have not had an opportunity to complete it. However, we are going to recess next week for approximately ten days, and during that time I expect to complete it.

This is merely to inform you of the reason for my delay in getting the record out, and will complete it within the next couple of weeks. We will take care of any extension of time, if such be needed, to protect your appeal.

Yours very truly,
D B Jordan
D. B. Jordan,
Court Reporter,
135 Woodglen Drive,
Mississippi City, Miss.

Mississippi
✓
[illegible]

L. H. Rosenthal
242½ East Capitol St.
Jackson, Mississippi

Carl Rachlin
280 Broadway
New York 7, New York

Dear Mr. Rachlin:

Enclosed is a copy of the Designation of the Record on appeal I filed today. It was my desire to file an abbreviated designation so that all the garbage would be left out but after talking with Mrs. Valdeck I was enformed she desired for me to file for every thing.

Hoping that this hot weather is finding you and your faimly in good health.

Yours truly,
L. H. Rosenthal
L. H. Rosenthal

LR/fr

Enc: 1

RECEI
JUN 20 19
VLADECK & E

August 25, 1963

RECEIVED
AUG 27 1963
VLADECK & ELIAS

Honorable Carl Rachlin,
Attorney,
280 Broadway,
New York 7, N. Y.

in re: Robert L. Pierson, et al
vs. No. 3315
J. L. Ray, et al

Dear Mr. Rachlin:

I have completed the transcript of testimony in this case and it is ready to be filed with the clerk for use in the making of the appeal record.

However, when checking over the transcript before filing I discovered that the voire dire of jurymen is not transcribed and is not a part of the transcript as it now is. I don't know whether you or Mr. Watkins want it as a part of the record, but if so please advise me at once. This will delay somewhat the filing of the transcript.

Awaiting your reply, I am,

Yours truly,
D B Jordan
D. B. Jordan

cc: Mr. Thomas Watkins

D. B. Jordan,
135 Woodglen Dr.,
Mississippi City, Miss.

[illegible]

Mr. D. D. Jordan
[illegible]
[illegible], Maryland

Re: Robert L. Pierson, et al
[illegible]

Dear Mr. Jordan:

This acknowledges your letter of August [illegible]. Please be advised that we would like the [illegible] of the record.

Very truly yours,

[illegible]

[illegible]
cc: Thomas [illegible], Esq.

RECEIVED
OCT - 3
VLADECK & ELIAS

L. H. Rosenthal
Attorney At Law
242½ East Capitol St.
Jackson, Mississippi

Carl Rachlin
Attorney At Law
280 Broadway
New York 7, New York

Re; Pierson, Et Al.
Vs. Ray, Et Al.
No. 3315

Dear Mr. Rachlin:

I am enclosing a copy of an order extending the time for filing of the record. The notice of appeal was filed on June 10th, 1963, therefore, the record should have been filed and docketed on or about September 13th, 1963. However, this was not done but another order exfending the time was entered on September 13th, 1963 extending the time to December 1st, 1963. This order was entered by Circuit Judge Ben Cammeron apparently at the request of the Court Reporter or the Clerk I do not know which. I do not have a copy of this order but I inspected the same in the Clerk's office and it appeared to be almost idenitical with the enclosed order.

We are going to be in need of a brief in this case. If you wish I will began work on this at once. If you wish I will obtain a copy of Ben Smith's brief in the case of Nesmith, Et Al. Vs. H. D. Alford, Et Al. reported in 318 Federal 2nd at page 110. I believe this brief, due to the similarity of the cases, would be a good point from which to began our brief. Please notify me promptly what action you desire me to take.

Yours truly,
L. H. Rosenthal
L. H. Rosenthal

LR/fr
Enc: 1

Dear Leonard
Thank you for your letter re Pierson v Ray. I am disturbed about the record delay. Is this deliberate [illegible]

do you think? It would be good to see a copy of Ben Smith's brief in the Nesmith case. Of course, much of our brief will have to do with the judge refusing the important parts of the depositions and letting in all the horrendous [illegible]. What is your present estimate as to when we will have the record?

Regards

CR

[illegible]

Mr. [illegible]
Attorney At Law
[illegible] West Capitol St.
Jackson, Mississippi

Dear Leonard:

Thank you for your letter of [illegible] disturbed about the recent delay. [illegible] do you think it would be good to [illegible] Smith's brief in the [illegible] our brief will have to do with the [illegible] portant parts of the depositions and [illegible] tremendous background. What is your [illegible] we will here the [illegible]?

Regards,

Very truly yours,

[illegible]

[illegible]

United States District Court
SOUTHERN DISTRICT OF MISSISSIPPI
GULFPORT, MISSISSIPPI

CHAMBERS OF
SIDNEY C. MIZE
DISTRICT JUDGE

December 1, 1963

RECEIVED
DEC-2 [illegible]
VLADECK & ELIAS

Honorable Carl Rachlin
280 Broadway
New York 7, New York

Re: Pierson, et al, Appellants
v. No. 3315--Jackson
Ray, et al, Appellees

Dear Mr. Rachlin:

I am enclosing herewith statement covering the preparation of the appeal record in the above case. I am sorry that this was delayed in the making, but as I explained to you over the telephone, Mr. Jordan was so involved in a lengthy trial wherein daily transcript was furnished that he could not get the transcript in your case out any earlier.

The ten copies required by the Court of Appeals have been sent to the Court of Appeals direct and your copies, as well as those required to be served upon opposing counsel, are on their way via REA Express.

With every good wish and kindest regards, I am

Sincerely yours,

Theresa Herbert
(Miss) Theresa Herbert
P. O. Box 610
Gulfport, Mississippi

Rev. Mr. John B. Morris
Episcopal Society for Cultural and [illegible]
5 Forsythe Street, N. W.
Atlanta 3, Ga.

Dear John:

After the usual delays in the Mississippi Courts, the [illegible] have finally been sent on to New Orleans.

Enclosed is the bill of the Court for preparing all the [illegible] copies of the record. As you can see, the [illegible] bill is high but this was anticipated.

I have not spoken to you since the horrible events of the [illegible] couple of weeks. All that we can say is just as well [illegible] so I leave it unsaid, knowing that you understand.

With kindest regards,

CARL RACHLIN

CR/pd
Enc.

Miss Vs. Morris

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

RECEIVED
DEC 23 1963
VLADECK & ELIAS

December 19, 1963

Mr. Carl Rachlin
Vladeck and Elias
280 Broadway
New York 7, New York

Dear Carl:

Thanks so much for sending the voluminous record on our case. Do you know anymore now as to when the court will hear the appeal? Also, do we want to do anything about the matter of getting other groups to submit briefs in our behalf?

I haven't looked at our financ~~i~~es on this lately, but with the high cost of the record and all it is very likely that we will have to do a little fund raising to keep the thing going. However, we will certainly do this if it is necessary and I shall try to look to our figures in this department soon.

Hope that all remains and goes well with you and yours during the Holiday season. I haven't been to New York for some time, and probably won't get up there until early spring. However, I shall look forward to seeing you when I come next.

Yours faithfully,

John

The Reverend John B. Morris
Executive Director

JBM/vg

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA.

February 25, 1964

FEB 28 REC'D

Mr. Thomas H. Watkins
Attorney at Law
800 Plaza Bldg.
Jackson, Mississippi

Re: Robert L. Pierson, et al vs. J. L. Ray, et al

Dear Sir:

Replying to your letter of February 22, this is to advise that on December 2, 1963 this office received the record on appeal and mimeographed copies of the record, and on that date forwarded to counsel for appellant a requisition for the docketing fee of $25.00. Since the docketing fee has not been paid, the case has not been docketed and our notice as to time for filing briefs can not be issued until the case is docketed.

Very truly yours,

EDWARD W. WADSWORTH
Clerk

G. F. Ganucheau

By
G. F. Ganucheau
Deputy Clerk

/rm
cc: Mr. L. H. Rosenthal
Mr. Carl Rachlin
Mr. E. W. Stennett

L. H. ROSENTHAL
ATTORNEY AND COUNSELLOR AT LAW
221 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI

353-8143 939-1645

MAR 4 REC'D

353-8143

March 2, 1964

Hon. Carl Rachlin
280 Broadway
New York 7, New York

Re: Pierson vs. Ray

Dear Sir:

Did you receive a carbon copy of a letter from the deputy clerk of the fifth circuit to Thomas H. Watkins dated February 25, 1964?

If not I would like to call your attention to the fact that the reason the above styled case has not been docketed is due to the fact that the docketing fee as not been paid, and further the time for filing braifs cannot be set until this has been done.

If you care to review your file a request was made for this fee by letter on December 4, 1963. It was my understanding that you would take care of all fee that was necessary to pay to the court.

Unless you have some reason for not having paid said fee I suggest that we pay this fee immediately. It seem to me that it would be outrageous for us to let all the work, not to mention the money, that has gone into this case go to waste for lack of prosecution.

Your friend,

L. H. Rosenthal

L. H. Rosenthal

LR/fr

P. S.: Please note the change of address.

Dear Sir
I have paid
the fee. Just
back with

United States Court of Appeals
Fifth Circuit

No.

Robert L. Pierson, et al, Appellants

vs.

J. L. Ray, et al, Appellees

Appeal from the United States District Court
Southern District of Mississippi, Jackson Division

Motion of Appellees to Docket and Dismiss, and Brief in Support thereof

---

E. W. Stennett
City Attorney
Jackson, Mississippi

Thomas H. Watkins
[illegible]
Jackson, Mississippi

[illegible]

INDEX

Page

MOTION OF APPELLEES TO DOCKET AND DISMISS APPEAL 1

APPENDIX "A" TO MOTION: [Certificate Clerk of Court certifying appeal duly sued out or allowed] 8

BRIEF IN SUPPORT OF APPELLEES' MOTION TO DOCKET AND DISMISS 3

'CERTIFICATE OF SERVICE 7

CASES AND OTHER AUTHORITIES:

Copco Steel & Engineering Co. v. Neunkircher Eisenwerk, USCA 6th, 267 F.2d 491 5

MacNeil Bros. Co. v. Forte, USCA 1st, 253 F. 2d 500 7

United States v. Gallagher, et al, CCA 9th, 151 F.2d 556 5
United States v. Tamotsu, USCA 9th, 198 F. 2d 747 6

Federal Rules of Civil Procedure, Rule 73(g) 1, 2, 3, 4, 5

Rules 5th C.C.A.,
  Rule 16, paragraph 1 3
  Rule 16, paragraph 4 4

MOTION OF APPELLEES TO DOCKET AND DISMISS APPEAL

NOW COME the Appellees in the above styled and numbered action, by their attorneys, and respectfully move the Court to docket and dismiss this case for failure of the Appellants to comply with Rule 73(g) of the Federal Rules of Civil Procedure, and for failure of the Appellants to comply with Rule 16 of this Court and for want of prosecution, and in support thereof would show unto the Court the following:

(1) On September 10, 1962, the Appellants as plaintiffs filed their complaint in the United States District Court for the Southern District of Mississippi, Jackson Division, against the Appellees as defendants in this civil action to recover damages for alleged deprivation of civil rights and for alleged false arrest and imprisonment. A final judgment in favor of the Appellees was entered in the District Court May 21, 1963. The plaintiffs filed notice of appeal June 10, 1963. Under date of July 3, 1963, the District Court signed an order under Rule 73(g) extending the time for filing the record on appeal and docketing the appeal in this Court for 90 days from the date of filing the first Notice of Appeal. On September 7, 1963, Circuit Judge Ben F. Cameron of this Court signed an order extending the time for filing the record on Appeal and docketing the appeal in this Court to December 1, 1963.

(2) On December 2, 1963, the Clerk of this Court received the record on appeal and mimeographed copies of the record, and on that date forwarded to counsel for Appellants a requisition for the docketing

fee of $25.00. Said docketing fee has not been paid, and the case has never been filed or docketed in this Court, and the time allowed therefor has long since expired.

(3) The Appellees produce and file herewith a Certificate from the Clerk of the Court wherein the judgment was rendered, stating the case and certifying that such appeal has been duly sued out or allowed. A true copy of said Certificate is attached as Appendix "A" to this motion and brief in support thereof.

WHEREFORE, Appellees respectfully move the Court to docket and dismiss this case for failure of the Appellants to comply with Rule 73(g) of the Federal Rules of Civil Procedure, and for failure of the Appellants to comply with the Rule 16 of this Court, and for want of prosecution.

E. W. STENNETT
City Attorney
Jackson, Mississippi

THOMAS H. WATKINS
800 Plaza Building
Jackson, Mississippi

BY ______________________
Attorneys for Appellees.

BRIEF IN SUPPORT OF APPELLEES' MOTION TO DOCKET AND DISMISS

Paragraph 1 of Rule 16 of this Court provides:

> "It shall be the duty of the appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. If the record on appeal is not filed in this Court within the periods provided by Rule 39 (c) of the Federal Rules of Criminal Procedure or Rule 73(g) of the Federal Rules of Civil Procedure, whichever may be applicable, the clerk shall refuse to accept it unless so ordered by this court or a judge thereof. The order or orders of enlargement shall be filed with the clerk of this court. If the appellant shall fail to comply with this rule, the appellee may have the case docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such appeal has been duly sued out or allowed. And in no case shall the appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of this court."

Rule 73(g) of the Federal Rules of Civil Procedure provides:

> "DOCKETING AND RECORD ON APPEAL. The record on appeal as provided for in Rules 75 and 76 shall be filed with the appellate court and the appeal there docketed within 40 days from the date of filing the notice of appeal; except that, when more than one appeal is taken from the same judgment to the same appellate court, the district court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date of filing the first notice of appeal. In all cases the district court in its discretion and with or without motion or notice may extend the time for filing the record on appeal and docketing the appeal, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order; but the district court shall not extend the time to a day more than 90 days from the date of filing the first notice of appeal."

Under date of May 21st, 1963, a final judgment was entered in favor of the Appellees as defendants in the United States District Court for the Southern District of Mississippi, Jackson Division, in Civil Action No. 3315 in that Court. Notice of Appeal was filed in the District Court by counsel for plaintiffs June 10, 1963. Under date of July 5, 1963, an order was entered in the District Court under Rule 73(g) extending the time for filing the record on appeal and docketing the appeal in this Court for 90 days from the date of filing the first Notice of Appeal.

An order signed September 7, 1963, by Circuit Judge Ben F. Cameron was entered in this Court and was filed September 13, 1963, in the District Court which purported to extend time for filing the record on appeal and docketing the appeal to December 1, 1963. On December 2, 1963, the Clerk of the United States Court of Appeals for the Fifth Circuit received the record on appeal and mimeographed copies of the record and on that date forwarded to counsel for Appellants a requisition for the docketing fee of $25.00. Said docketing fee has not been paid, and the case has not been docketed in this Court. The plaintiffs have not to this date docketed the appeal in this Court, and the time allowed therefor has long since expired. Paragraph 4 of Rule 16 of this Court provides:

> "In all cases the appellant, on filing the record, shall pay the $25.00 filing fee to the clerk either in cash or by money order or certified check."

The Appellees have produced a Certificate from the Clerk of the Court wherein the judgment was rendered, stating the case and certifying that such appeal has been duly sued out or allowed. We respectfully submit that the Appellees are entitled to have the case docketed and dismissed in accordance with Rule 16 of this Court.

In Copco Steel & Engineering Company v. Neunkircher Eisenwerk, U.S.C.A. 6th, 267 F.2d 491, the Court, in a per curiam opinion, sustained a motion to docket and dismiss, saying:

> "Appellant's motion of April 23, 1959, for an extension of time in which to docket the record on appeal is denied.
>
> "It appearing that appellant was granted by order of the District Court a fifty-day extension of time in which to docket the record on appeal, which time has expired without the record having been so docketed; that the cost bond required by Rule 73(c) of the Federal Rules of Civil Procedure, 28 U.S.C.A., has not been executed; and that the appellant has not ordered from the Official Court Reporter a stenographic transcript of the testimony; It Is Ordered that appellee's motion to docket and dismiss the appeal be sustained and said appeal is now docketed and dismissed."

In United States v. Gallagher, et al, C.C.A. 9th, 151 F.2d 556, the Court sustained a motion to dismiss for failure to comply with Rule 73(g), and said:

> "The notice of appeal was dated and filed on March 21, 1945. On April 30, 1945, before the expiration of the 40-day period, the District Court made an order extending the time for filing the record to May 21, 1945. The record was not filed on or before May 21, 1945, nor was there, on or before that date, any further extension of the time for such filing. On May 31, 1945, appellant moved for and obtained from a judge of this court an order purporting to extend the time for filing the record to June 16, 1945; but, having been made after the expiration of the period for filing as previously extended, the order of May 31, 1945, was invalid and ineffective. The record was filed here on June 4, 1945--14 days late."

* * *

> "For appellant's failure to comply with Rules 73(g), 75(a) and 75(d) no excuse is shown. The failure does not affect the validity of the appeal, but is ground for such action as we deem appropriate. The action we deem appropriate is dismissal of the appeal.
>
> "Motion granted and appeal dismissed."

In United States v. Tamotsu, U.S.C.A. 9th, 198 F.2d 747, the Court sustained a motion to dismiss the appeal, saying:

> "However, to secure a review of the judgment, appellant was required, among other things, to comply with subdivision (g) of Rule 73; which is to say, appellant was required to file or cause to be filed with this court a record on appeal and to docket the appeal or cause it to be docketed in this court within the 40-day period specified in subdivision (g) or a valid extension thereof. There was no extension of the 40-day period. Appellant did not file or cause to be filed a record on appeal or docket the appeal or cause it to be docketed until May 26, 1952--35 days after the expiration of the 40-day period. Thus appellant failed to comply with subdivision (g).
>
> "Appellees have moved to dismiss the appeal because of appellant's failure to comply with subdivision (g). No valid excuse for the failure is shown. The failure does not affect the validity of the appeal, but (no remedy being provided in Rule 73) is ground for such action as we deem appropriate, which may include dismissal of the appeal. See subdivision (a) of Rule 73. The action we deem appropriate is dismissal of the appeal. Cf. United States v. Gallagher, 9 Cir., 151 F.2d 556; Tucker Products Corp. v. Helms, 9 Cir., 171 F.2d 126; United States v. Stanton, 9 Cir., 172 F.2d 642; United States v. Krause, 9 Cir., 197 F.2d 329; Fong v. James W. Glover, Ltd., 9 Cir., 197 F.2d 710.
>
> "Appeal dismissed."

The record on appeal was not filed in this Court within the 40 days originally required by the Rules, or within the 90 days allowed by the

District Judge's extension, or by December 1, 1963, allowed by Judge Cameron's extension. The fact that no effort has been made by the Appellants to have the case filed or docketed in this Court for more than 90 days after December 1, 1963, requires a dismissal of the appeal for failure to comply with the Rules. We believe that it would also require a dismissal of the appeal for want of prosecution. MacNeil Bros. Co. v. Forte, U.S.C.A. 1st, 253 F.2d 500.

We respectfully submit that Appellees' motion to docket and dismiss the appeal should be sustained.

Respectfully submitted,

E. W. STENNETT
City Attorney
Jackson, Mississippi

THOMAS H. WATKINS
800 Plaza Building
Jackson, Mississippi

BY__________________________
ATTORNEYS FOR APPELLEES.

CERTIFICATE

The undersigned counsel of record for the Appellees hereby certifies that a true copy of the foregoing motion and brief in support thereof has been this day forwarded by United States mail, postage prepaid, to Hon. Carl Rachlin, 280 Broadway, New York 7, New York, and to Hon. L. H. Rosenthal, 221 N. President Street, Jackson, Mississippi, Attorneys of Record for the Appellants.

This the 4th day of March, 1964.

____
Of Counsel for Appellees.

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. ____

ROBERT L. PIERSON, ET AL, APPELLANTS

VS.

J. L. RAY, ET AL, APPELLEES

CERTIFICATE

The undersigned Clerk of the District Court of the United States for the Southern District of Mississippi hereby certifies as follows, to-wit:

(1) That on September 10, 1962, the Appellants in the above styled case filed their complaint against the Appellees as defendants in the District Court of the United States for the Southern District of Mississippi, Jackson Division, and that said action was docketed as Civil Action No. 3315 in said Court.

(2) That paragraph 3 of the complaint in said action stated: "This cause of action is a civil action for damages for deprivation of civil rights and for false arrest and imprisonment of Plaintiffs by Defendants."

(3) That on May 21, 1963, a final judgment in favor of the defendants was entered in said action.

(4) That on June 10, 1963, the plaintiffs in said action filed a Notice of Appeal in said United States District Court.

(5) That there was filed in said action in the United States District Court on July 5, 1963, an order dated July 3, 1963, signed by S. C. Mize, United States District Judge, which provided:

> "It being made to appear to the Court that notice of appeal has been filed in the above styled cause, but that the printed record has not been completed and the Clerk is not in a position to file the record on appeal and that the time should be extended, so for good cause shown it is therefore ordered by the Court that the time for filing the record on appeal and docketing the action in the Court of Appeals be and the same is hereby extended to ninety days from the date of the first notice of appeal."

(6) That on September 13, 1963, there was filed in said action in said District Court a copy of an order dated September 7, 1963, signed by Ben F. Cameron, United States Circuit Judge, which provided:

> "It being made to appear to the Court that notice of appeal has been filed in the above styled cause, but that the printed record has not been prepared due to the fact that the Court Reporter has been engaged in a lengthy trial in which a daily transcript is being delivered and he has not yet been able to file his transcript in this cause, so for good cause shown it appears that the time should be extended. It is therefore ordered by the Court that the time for filing the record on appeal and docketing the action in the Court of Appeals be and the same hereby is extended to December 1, 1963."

(7) That no other orders have been entered in said District Court pertaining to the appeal of said action or extensions of time

incident thereto.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, this ______ day of March, 1964.

Loryce E. Wharton, Clerk
United States District Court for the
Southern District of Mississippi

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

- - - - - - - - - - - - - - - - - - X

Robert L. Pierson, et al,

Appellants

vs.

DOCKET NO. 21325

J. L. Ray, et al,

Appellees

Appeal from the United States District
Court, Southern District of Mississippi,
Jackson Division

- - - - - - - - - - - - - - - - - - X

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

CARL RACHLIN, being duly sworn, deposes and says:

1. Deponent is the attorney for the Appellants herein. That he is in receipt of a Motion by Appellees to Docket and Dismiss this Appeal.

2. That this affidavit is submitted in opposition to said Motion for the reasons stated below.

3. The burden of the argument in favor of the Motion is that the docketing fee had not been paid to the Clerk of this honorable Court, although admittedly the record on appeal, paid for by Appellants, in an amount of approximately $1200.00 I am informed and believe had been received by the Clerk on or about December 2nd, 1963.

4. Prior to the making of this Motion, your deponent mailed to the Clerk the docketing fee of this Court. The receipt in deponent's possession shows that the fee was received by the Clerk of this Court on March 2nd, 1964. The said receipt shows that the case bears Docket No. 21325.

5. On March 4, 1964, the

notice to counsel, which notice states: "The record in the above entitled case is in final form. The time for filing BRIEFS is indicated in the following rule". Rule 24 is set forth thereafter.

6. The Motion by Appellees was received by the Clerk on or about March 5, 1964, that is after the case had, in fact, been docketed.

7. Appellees' moving papers show almost six months' delay from the time of filing the Notice of Appeal (June 10, 1963) until the receipt of the Record on Appeal by this Court on December 6, 1963. These papers show that this delay was in no wise the fault of Appellants or deponent, but occurred because the reporter below could not get the record ready.

8. This Appeal has substantial merit to it.

9. Any delay in paying the docketing fee was for the following reason:

In January, deponent moved his office to his present address at 165 West 46th Street, New York, New York. In the confusion of moving and the exceedingly heavy pressure of work, on February 28th, deponent was made aware that the docket fee was not paid, although the record was paid for and in the hands of the Clerk. Immediately that day the fee was dispatched to the Clerk by deponent, who received it on Monday, March 2nd, as set forth above.

10. The cases cited by Appellees are not pertinent hereto because (a) this case has, in fact, been docketed, all fees paid at the time the Motion was made and

(b) the record on appeal
attempt was made to file it until after the time had expired. Here, the record on appeal was properly filed with the Clerk. The intent to carry forward this appeal was evidenced by Appellants paying for the record on appeal; the delay in paying the $25.00 fee was counsel's and not Appellants. The briefs are being prepared and will be ready as provided in Rule 24 of this Honorable Court. No harm has been occasioned by Appellants hereby.

11. For all the reasons above stated and because deponent believes this is a meritorious appeal, and because Appellants paid for the record on appeal and the case has been docketed prior to the motion, it is respectfully urged that aforesaid Motion be denied.

Sworn to before me this 10th
day of March, 1964.

CAROL RUBIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-3388845
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1964

CERTIFICATE

The undersigned counsel of record for the Appellants hereby certifies that a true copy of the foregoing Affidavit has been this day forwarded by United States mail, postabe prepaid, to Hon E. W. Stennett, City Attorney, Jackson, Mississippi, and to Thomas H. Watkins, Esq., 800 Plaza Building, Jackson, Mississippi, Attorneys of Record for the Appellees.

This is the 13th day of March, 1964.

Of Counsel for Appellants.

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA.

APR 13 Rec'd

April 7, 1964

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re: No. 21325 - Robert L. Pierson, Et Al vs. J. L. Ray, Et Al

Gentlemen:

The following action has this day been taken in the above case:

( ) An extension of time for filing and docketing the record on appeal has been granted to and including

( ) An extension of time for filing designation as to printing of the record has been granted to and including

(x) An extension of time for filing brief for (x) appellant ( ) appellee has been granted to and including May 2, 1964.

( ) The Court's opinion has this day been rendered and a copy thereof is enclosed.

( ) An order has been entered extending the time for filing a petition for rehearing to and including

( ) Order enclosed has been entered.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Clara R. James
Deputy Clerk

Mr. Carl Rachlin
Mr. L. H. Rosenthal
Mr. Thomas H. Watkins
Mr. E. W. Stennett

[Enclosed, ? to Rachlin, 1964, April 2]

Analysis of the Record in Pierson v. Ray

Summary Outline

Assuming lack of probable cause and intent as such to be irrelevant, a directed verdict of liability against the 3 police officer defendants should have been granted as to Claim I (Civil Rights) (see paragraph 1.b. of analysis) and Claim II (false-arrest-false-imprisonment)(see para. 1.a.).
The record establishes these defendants arrested the plaintiffs without a warrant for an offense not committed; Section 2087.5 of the Mississippi Code being either unconstitutional (see para. 2 for Court's erroneous view of the law respecting breach of the peace), unconstitutional as applied, or inapplicable (constitutional as interpreted by Judge Moore)

Assuming probable cause and/or intent to be relevant, a directed verdict of liability against the 3 officer defendants should have been granted depending on (see para. 3): the immateriality of the asserted existence of an "ugly" "crowd" at the terminal, Spencer's lack of requisite judicial independence and/or the conclusiveness of Moore's acquittal, plus, est CLAIM I the availability of a conclusive presumption as to intent, based upon facts in (or judicially noticeable outside of) the record.

At best, there appears no better than a jury-submission case against Judge Spencer under Claim II, but it is possible that under Claim I there may be ground for a directed verdict of liability (see para. 4 and section III of para. 7).
Of the 3 possible bases for liability on the part of Judge Spencer:
- a conspiracy theory seems unsupported in the record by any substantial evidence; a directed verdict for Spencer seems justified
- a predetermination theory, if permissible in law, is a jury-submission matter at best
- a no immunity for lack of requisite independence theory, if permissible in law, is a basis on which a directed verdict might be possible.

Unless an attack is to be made on the jury list in the Southern District, there appears no profit in a retrial, including retrial on the issue of damages, except as regards the category of expenses of civil litigation (including travel costs and attorneys' fees) (see para. 5).
To recover the expenses of civil litigation, recovery of which appears an indispensable element to render this, or similar cases, worth bringing, the following avenues may possibly be utilized:
- that recovery of such expenses is a proper item of "compensatory damages" under Claim I (Civil Rights), under the circumstances existing in Mississippi
- that recovery of such expenses be deemed embraced within the lower permissible limits of a jury award under either Claims I or II as "punitive damages" necessarily flowing from the existence of "malice" as a conclusive legal presumption. Note: there may be advantages in proceeding by malicious prosecution

in subsequent cases.

It seems desirable however that a record regarding civil expenses be made (presently lacking) and a record on which the appropriateness of their recovery, if proceeding under Claim I as compensatory damages, be made (presently lacking), as well as [redacted]srecovery of these items being more clearly raised generally, as in suggested instructions.

Two jury-composition matters of importance are:

the probable advantages to be gained from an attack on the jury list as unconstitutionally prepared (to be made on retrial, by motion to quash, or, preferably, by a collateral injunction proceeding, see para. 5 and letter of March 17)

the Court's refusal to allow on voir dire question whether jurors believed negro and white clergymen had a right to go to a bus station together (to be raised on present appeal, see para. 6).

Matters constituting reversible error and warranting mistrial are set out in paragraph 7 at length (see also paragraph 8). It appears desirable to raise the substance of these matters on appeal for the sake of future cases.

Suggestions regarding technique to reduce jury-prejudice, upon retrial, are made in paragraph 9.

EEW
3/24/64

Analysis of the Record in Pierson v. Ray,

Trial in District Court May 1963

1. With respect to the three police officer defendants, liability under a false-imprisonment-false-arrest theory (Claim II) appears clear from the record. Plaintiffs' motion for a directed verdict -- Record p. 395, renewed p. 416, renewed after verdict p. 416 -- should to this extent have been granted. The record shows: (a) the defendants' testimony conceded that acting without a warrant they arrested, and thereby caused the detention, and initial imprisonment of, the plaintiffs -- Record p. 280 (Nichols), p. 287, 292 (Griffith), p. 359 (Ray), p. 364 (Ray acknowledges did not speak to Nichols or Griffith upon arrival); (b) the arrests and confinements were "illegal", in that plaintiffs' conduct had not been such as to commit breach of the peace, for which they were charged, in the presence of the arresting officers, (the Court's erroneous view of constitutional requirements is discussed infra in para. 2); ~~as this offense may be constitutionally defined and interpreted~~ (3) the defendants' testimony concedes that the plaintiffs' committed no violence, threatened none, voiced no loud language, and that the "presence" of the plaintiffs in the terminal was the sole cause of their arrest, trouble being expected from other persons as a consequence if plaintiffs' presence continued -- Record p. 288-289, 291, 389 (Griffith); p. 300, 364-365, 367-368 (Ray); p. 377-378 (Nichols) --; (4) yet the defendants did not ask anyone else to leave the terminal, to move on, or arrest anyone other than those in plaintiffs' group -- Record p. 289, 290, 295-296, 389-390 (Griffith), p. 300-302, 366 (Ray) --; (1) the plaintiffs' group was a mixed group of 15 white and negro Episcopal clergymen -- Record e.g. p. 81, --; (2) their intention was to have lunch in the lunchroom of the Trailways

Terminal, preparatory to departure for Chattanooga by bus 30-40 minutes later -- Record p. 359 (Ray acknowledges these facts), p. 372 (Nichols acknowledges these facts), see also p. 321-322 (Zimmer), and testimony of plaintiffs ~~to this effect, indicating~~ indicating they had barely begun to enter the lunchroom when they were ~~immediately~~ stopped and arrested, p. 13, 77, 80, 84, 226-227, 230, 269-270, 273 --; (5) plaintiffs' confinement until trial before Judge Spencer lasted two days -- Record p. 24, 94, 224, 277.

II. Plaintiffs' motion for a directed verdict of liability against the three police officer defendants (see above) should also have been granted, in regard to Claim I upon the facts appearing in the record~~, in regard to Claim I, the Civil Rights theory~~: (a) defendants ~~being~~ were police officers, ~~and~~ acting under color of Miss. Code Sec.2087.5, state action was present; (b) the plaintiffs were in the exercise of rights secured by the US Constitution, viz. to travel in interstate commerce, and use facilities connected therewith, free from segregated restrictions based upon race: (1) the record indicates (in the passages cited infra. above) that plaintiffs were interstate passengers, using an interstate bus passenger facility, ~~and~~ bearing tickets at the time of their arrest for an interstate destination; decisions of the US Supreme Court prior to the arrests had ~~made clear~~ established that interstate passengers, and interstate facilities for their use, could not be ~~racially~~ segregated ~~by~~ compulsorily by state action; (2) ~~additionally,~~ that this was in fact the purpose behind the arrest (to the extent purpose is relevant) can be presumed or inferred conclusively from, inter alia, the existence of an "Order" of the Police Department of the City of Jackson, in force at the time of the arrests, ~~and~~ posted conspicuously on the public sidewalk in front of the Trailways terminal, reading "White Waiting Room Only, By Order of the Police Department," and indicating the waiting room (~~and~~ lunchroom?) in which plaintiffs were arrested; see Record p. 297 (Ray acknowledges sign), p. 286 (Nichols ackowledges such a sign would be an instruction to him), p. 294

(Griffith states has no knowledge of any negro ever entering that portion of the terminal who was not arrested), p. 165 (Mayor aware of existence of the sign), see also p. 167 (reference to Mississippi statute requiring separate waiting rooms for both races); (3) in addition to ~~the arrest of~~ plaintiffs arrest constituting ~~illegal~~ an illegal enforcement of segregation laws customs, etc. of the state of Mississippi, and therefore conduct directly giving rise to liability under the Civil Rights Statutes (paragraph 22, ~~of~~ Claim I), the wrongful arrest of plaintiffs for an alleged breach of the peace, ~~in which their peaceful and protected~~ ~~federally interstate travel~~ ~~threatened no breach of the peace on their part~~, was ~~itself~~ a violation of due process and equal protection of the laws; if not every false arrest under alleged breach of the peace ~~charges~~ circumstances constitutes a violation of the Civil Rights statutes, nevertheless a violation would seem to exist where the group arrested is ~~both~~ ~~negro and white and engaged in interstate travel~~ exercising a federally protected right at the time of its arrest (paragraph 23, ~~of~~ Claim I).

Insert 2 para. p. 3a.

3. The above paragrapshs assume that, under Mississippi law, as under general common law, probable cause is not a defense available to a defendant in a false-arrest-false-imprisonment claim where the defendant police officer ~~make an arrest~~ has arrested plaintiff without a warrant for ~~a~~ an alleged misdemeanor not actually committed in the presence of the officer.*1 It is assumed, therefore, that the instructions given the jury regarding probable cause -- Record p. 407A, 409, 410; exception taken p. 414 -- are improper (and constitute reversible error). To what extent probable cause, or other elements (as, for example, ~~the~~ a requirement that plaintiffs' federally protected rights have been "intentionally" violated — see Court's instruction to this effect, Record p. 410-411) are ~~proper~~ necessary elements of recovery under Claim I may not be ~~equally~~ entirely clear under the cases todate. (Nesmith does not discuss these points; the assumption in Nesmith ~~seems to be~~ is that such elements are not necessary.) Though "intent" to invade a constitutionally protected right has been held to be a necessary element of proof in a ~~criminal/prosecution~~ trial under the criminal Civil Rights statutes (US v. Scales) the rationale for this requirement has no necessary application to civil lia-

---

Footnote 1, page 3: That this is true in general under Mississippi law seems to follow clearly from Section 2470, Mississippi Code of 1942, Recompiled, prescribing the conditions under which an arrest is privileged. The matter is somewhat complicated, however, by the language in 2470 dealing with breach of the peace. For an important Mississippi case interpreting this section see Carlisle v. City of Laurel, 124 So 786, 156 Miss 410 (1929), which affirmed the denial of an instruction relating to probable cause as a defense, under circumstances in which breach of the peace seems to have been necessarily involved (but is not very clearly discussed; it is possible

2. The Court's ~~therefore was in~~ error in not granting, in part, plaintiffs' motion for ~~a~~ these directed verdicts flowed from the Court's erroneous views of the law, expressed most clearly in the following passages:

> p. 40 : "...as I understand the law it is that while people have certain rights, yet there are limitations on practically every right or every freedom that is given to the people under the Constitution of the United States; and if they abuse that privilege, then the officers, in order to prevent a riot, in order to prevent bloodshed, or in order to prevent any difficulty that they can reasonably foresee, they have a right to direct that people shall move on."

> p. 402-403 : "...I think there is some testimony as such that the jury could draw the inference...that these plaintiffs ...conspired to come for the sole purpose of having themselves arrested...in order to obtain publicity...that they arbitrarily refused to move on...when...directed to do so by the policemen.... If a public officer can prevent a riot or a breach of the peace, it is his duty to do so..." "...I take judicial knowledge of the serious condition they had in Montgomery, Alabama, and Anniston, Alabama... where they actually had bloodshed and rioting...if the officers have reason to believe that there is high tension, when just almost a snap of the finger will set it off, if the officers can prevent that, I think it is their duty to do so."

Nor should the ~~The~~ Court ~~should not~~, as a matter of law, have permitted defendants to amend their answer to allege probable cause ~~amend their answer~~ (amendment presented to plaintiffs' counsel a few moments before the beginning of the trial) -- see pages 2-3, objection and motion to disallow overruled; motion to dismiss the defense of probable cause renewed p. 399 and 416, denied p. 401 and 417. (But see paragraph 3.)

The Court erroneously instructed the jury with respect to the elements of breach of the peace or disorderly conduct in the very language of Section 2087.5 of the Mississippi Code of 1942, Recompiled (see Record p. 405-406), the provisions of which are unconstitutional ~~as~~ if applied to plaintiffs' conduct. (Presumably the action of Judge Moore rendered the statute constitutional, as interpreted, at least in so far as the present plaintiffs are concerned. The District Court failed to appreciate the need for such interpretation.)

bility. If intent ~~and probable cause are~~ ~~lack of~~ is a necessary element~~s~~ to a recovery ~~however~~ under Claim I (~~and~~ or lack of probable cause a necessary element ~~to~~ under Claim II) then, in any event, a directed verdict should have been granted against the 3 officer defendants, ~~the question arises whether, on the present record, a directed verdict can~~ if, it is proper to draw certain presumptions as to intent from the record. ~~An still be obtained against the three police officer defendants. The~~ "intent" of the officers ~~is presumptively inferrable~~ ~~perhaps on the basis of the sidewalk police~~ to interfere with a constitutional right is inferrable from the sidewalk "order" (see above, para. 2), the circumstances of the arrest ~~and reasons assigned for it by the defendants' testimony~~ (see para. 1), (including possibly acknowledgment by two of the officers that they believed it "wrong" for negroes and whites to be together -- Record p. 280-281 (Nichols), p. 296 (Griffith)).

~~Since~~ The defendants' assert, however, that their "intent" was to prevent "trouble", including serious violence, from brewing. The intent to be presumed from the record-items mentioned would have to be regarded as ~~irrebuttable~~ conclusive therefore to escape a jury submission on the issue of intent. ~~This may not be difficult;~~ But where ~~in fact, since, if~~ the method used to prevent "trouble" ~~(arrest of non-offenders) is constitutionally prohibited, it may be proper to refuse to treat~~ occurred upon the heels of Supreme Court decisions establishing a right to non-segregated travel, with the police officers acting under a police order, it may be appropriate to treat as ir- ~~the presumed intent as rebuttable, and/or in the whole context of recent~~ rebuttable the presumption that the plaintiffs' arrests and some ~~it may~~ ~~Supreme Court decisions establishing a right to non-segregated travel, it~~ ~~be conclusively presumable that~~ ~~some~~ 300 arrests at the Jackson terminal(s) thereafter were with intent to defy ~~and refuse to follow~~ these decisions. (For Judicial notice ~~almost~~ ~~as this arrest~~ that this was the City's purpose, taken by the Fifth Circuit see Bailey v. Patterson.) (Also, it is significant that the City, by statute, is now authorized to pay any judgment obtained against these 3 officers.)

Regarding ~~the presence of~~ lack of probable cause for the arrests, and whether as to this element, if necessary, a directed verdict for plaintiffs is possible, the two chief problems would appear to be (a) whether the initial conviction by Spencer gave rise to a conclusive presumption that probable cause existed (see "majority" view noted in Nesmith, footnote 20) but in section dealing with malicious prosecution count), ~~and~~ or whether Judge Moore's judgment of acquittal of Jones, followed by nolle prosse of the other cases, on the other hand conclusively established that probable cause did not exist for the arrests -- the Court's instruction for plaintiffs #3, Record p. 407A, seems, in effect, to ~~be/be~~ have opted the second view (inconsistent instructions given later by the Court were excepted to by counsel for plaintiffs, see p. 414 --) and also (b) whether any "material" facts are in dispute.

To consider (b) first, two sub-questions arise: ~~The question arises~~ whether it is "material": (1) that the defendant officers asserted that a "crowd" of some 25-30 persons followed plaintiffs into the bus terminal, and that the mood of the people therein was "ugly" -- see Record p. 288-289, 290, 384 (Griffith), p. 358, 363-364 (Ray; assertion that Zimmer expressed concern over two men at the pin ball machine contradicted by Zimmer at p. 348), and p. 373 (Nichols; whose testimony elsewhere, however, concedes that no crowds existed, see p. 282, 285, 377-378); this contrasts with the consistent testimony of the plaintiffs and Zimmer that no crowds were present at any time, that the mood of those in the terminal was merely curious, see Record p. 12-19, 81, 85-86, 89, 226, 228-229, 231, 233, 269, 271-272, 274, 321, 322, 333, 334; and with ~~the~~ certain uncontested facts chiefly that plaintiffs' movements from cab to terminal required barely some 45 seconds (Record p. 12, 81, 226, 269), that they had only begun to enter the lunchroom when they were ordered to halt (see above,para. 1), and that since the last incident at the terminal had been a month earlier, the city was"peaceful"again (Ray, p. 299); but assuming there is sufficient "dispute" over certain facts to make a jury question over those particular facts, the question would remain whether, in view of the conceded basis on which the arrests were made (see above,para. 1) even if a small crowd, of some ugliness, existed, this might constitute probable cause for a belief that the plaintiffs' failure to move on made them guilty of a breach of the peace, without some effort on the officers' part to control the crowd (or, in the alternative, to remove the plaintiffs from the scene, without arresting them); the question also arises ~~and/or~~ (2) whether earlier events, including those in Alabama, in which violence was perpetrated upon Freedom Riders, had any relevance on September 13 to the reasonableness of plaintiffs' arrests. On the view that neither (1) nor (2) are relevant, then there are no "material" facts in dispute in the record, and probable cause becomes a question entirely of law.

Reverting to (a) above, whatever the conclusiveness ~~effect~~ of Judge Moore's judgment of acquittal of Jones, the conviction by Spencer would seem to fall within the exception for non-independent judicial tribunals, whose judgments are without a presumption of correctness (wholly apart from the fact that Spencer is an alleged member of a conspiracy). No merit system as such for Municipal Judges (see Nesmith) was contended by defendants to exist in Jackson, and Spencer is removable at will by the Mayor and Commissioners -- see Record p. 163, 303, 318-320: statute prescribing 4-year terms reads merely "or until successor appointed".*1

4. Possible theories of liability regarding Municipal Judge Spencer are: (a) that he was a member of a conspiracy to arrest and convict the plaintiffs, without legal justification, and therefore was not protected by judicial immunity; (b) that the judgment of guilt and imposition of sentence, for which he was responsible in Municipal Court, was not arrived at merely erroneously, so as to be within the protection of judicial immunity, but was a fixed pre-determination, formed before hearing the evidence in court; (c) that, not being a magistrate of the requisite independence and security of office, he is not protected by judicial immunity from tort liability for false imprisonment. With regard to (a) there is no direct evidence in the record to indicate participation by Spencer in a conspiracy. Such indirect evidence, from which the jury might draw an inference of concerted action, would appear to consist only of: (1) plaintiffs' convictions by Spencer -- Record p. 308; (2) the severity of the sentence -- ibid; (3) somm 300 earlier convictions and sentences by Spencer on similar charges -- Record p. 309; and (4) certain evidence, or proferred evidence, indicating predetermination of guilt before trial sofaras plaintiffs were concerned

---

Footnote 1, page 6: On an occasion in which the Mississippi Supreme Court might have chasen between the majority and minority positions in respect to the conclusiveness of a judgment of conviction in a malicious prosecution case, it ducked the issue, see Brooks v. Super Service STation, 183 Miss 845, 185 So 202 (1938), and has apparently not been confranted with this question since. The conclusiveness of a conviction in a false imprisonment case was treated in Carlisle v. City of Laurel, 124 So 786, 156 Miss 410 (1929) wherein the court said: "...it may be seriously questioned whether, in a civil action such as this, the judgment of a court in a criminal case is competent at all. At least it is not conclusive. 'The plea of guilty is not conclusive on the defendant in a civil action, and he may show that he is not, in fact, guilty of any offense.' 15 RCL 1003, Sec.479; also Id. p. 1000, Sec.477."

-- Record p. 304, 320-324. Such evidence is, at best, insufficient it
plaintiffs' motion for
would seem to support/a directed verdict,~~for plaintiffs was was reversed~~,
Rather
see Record p. 395, 416 (twice). ~~In fact~~, insofar as/theory (a) is concerned, the motion on behalf of Spencer for a directed verdict -- Record p.
renewed 353,
353,/400; denied p./401 -- should probably have been granted. With regard to theory (b), (if this theory is supportable in law, either under false imprisonment cases in Mississippi, or under the Civil Rights theory of Claim I) there would appear to be enough evidence in the record to warrant
see,
~~to~~submission to the jury ~~upon retrial~~ --/in addition to the record items mentioned above, ~~see~~ p. 305-314 (fixed view that a citizen has no right to disobey a policeman's order;/in refusing to remove jury, as requested, for
at this point were the
proffer, Court/stated plaintiffs'/entitled to/"most favorable answer" to
in any event
excluded questions, ~~see~~ p. 314) 315, 317. A directed verdict ~~for either side~~ would not appear proper upon this theory of liability, since it would presumably remain for the jury to decide whether a fixed attitude toward
no matter how the same as
~~legal~~ guilt, ~~where~~ erroneous, was ~~[illegible]~~ a predetermination to convict.
With regard to theory (c), (if this theory is supportable in law, either under false imprisonment cases in Mississippi, or under the Civil Rights
if Spencer's is a
theory of Claim I) ~~where~~ tort liability ~~upon him~~ unprotected by ~~any~~ substantial shield of judicial immunity, ~~then a directed verdict for plaintiffs would seem proper; the record, particularly at p. 314, but see other passages mentioned above, reveals that Spencer possessed a fixed and erroneous legal view of the constitutional standard for a breach of the peace conviction;~~
then would ~~might well~~ be
~~But~~ whether his view was predetermined or not ~~would/appear~~ irrelevant under
If ~~may~~ ~~seem~~ from an erroneous judgment,
this theory, ~~for~~ liability ~~would~~/flows as in the case of the arresting officer, ~~from a single error~~ under
a ~~the~~
he-who-wrongfully-confines-does-so-at -his-own-peril principle, a directed verdict of liability against Spencer would ~~likely~~ be proper on the present record.

5. ~~Passing~~ On ~~to~~ the subject of damages, the following distinctions ~~would~~ are

important (a) whether the present record is adequate to support a directed verdict in the amount of undisputed compensatory damages for travel costs of making appearances by the plaintiffs in the criminal proceedings; and attorneys' fees in the criminal proceedings; (b) whether it is worthwhile to ask the Fifth Circuit to reverse the district court's rulings denying to counsel the right to question plaintiffs themselves regarding certain details of injury to reputation and/or humiliation suffered as a result of the arrests; (c) assuming complete retrial, or retrial on the issue of damages, the approach that should be taken to secure the maximum possible jury award, particularly as regards civil expenses, including attorneys'fees. Concerning (a) above, it may be of some significance that the testimony by the four plaintiffs as to their travel expenses in making appearances twice before Judge Moore, though undocumented, are also undisputed -- Record p. 78 (Jones), 98 (Morris), 237 (Pierson), 278 (Breeden) -- as was payment of a fee of $300 to Jack Young for attorney's fees. It is conveivable that, if no other items of damages are to be pressed -- certain telephone calls were mentioned by Morris, p. 98-99, but no details furnished; the possibility of recovering damages to reputation, or for humiliation, etc.,must, as a practical matter,be deemed remote ~~even under a very detailed and convincing presentation~~, ~~being what they are~~; the only additional item of damages worth the candle ~~to go back~~ for retrial would seem to be civil expenses, recovery of which, as a non-jury matter, or as a non-discretionary jury matter, after a thorough consideration may also be remote -- though probably infeasible, it may in that case be worth attempting to escape retrial entirely by seeking a Fifth Circuit decision reversing and rendering as to (a) items, ~~by~~ on appeal (conceeding that damage to reputation, or other damages were not shown, and could not be on retrial, rendering retrial a needless formality). I view the case for recovery of civil expenses as strong enough to merit retrial, see infra, but mention this approach as a possible means of reducing the costs of a otherwise costly legal victory.) Concerning (b) above, as just mentioned, it would seem of doubtful utility to press for a reversal of Judge Mize's rulings excluding questions to plaintiffs dealing with particulars of injuries to their reputation, money-earning capacity, etc. -- Record p. 29-33 (Jones), 100-101 (Morris), 238 (Pierson), 279 (Breeden). Unless such evidence is to be presented to a ~~constitutionally~~ thoroughly co-composed jury, the effort involved will be at best unproductive, if not counterproductive, ~~to suggest injury to plaintiffs' reputation, etc.,~~. Regarding (c) above, if tort suits of this sort are to have any present-day meaning for local officials, this is the meat of the coconut.*1 For although in an occasional case, or where summary judgment is available, it may be worthwhile suing to recover the costs only of an earlier criminal proceeding, the expenses of the civil proceeding will render this course impracticable in the bulk of false arrest cases. (As was mentioned in my letter of March 17) there may well be possibilities however under the Civil Rights based claim for contending, successfully, that attorneys' fees, and all other expenses of the civil proceeding necessary to a recovery, should properly be considered as items of compensatory damages. Under traditional American law of false imprisonment this is not, apparently, a maintainable position. (See Footnote 3, page 10.) In the present instance, however, there are very strong considerations which argue for the appropriateness, in a Civil Rights tort action arising in Mississippi (and certain other Southern areas), of adopting a more English practice. The principal consideration is that (white) jury emotions are so involved against those who would change the segregated social order, that even modest jury recoveries under the Civil Rights acts are impossible unless the jury award is somewhat controlled by the Court. Whether these facts need an evidentiary basis in the record, or can be presented via a Brandeis brief (judicial notice might be taken of them by a court so inclined)

Footnote 1, page 9: Presumably the present case will eventually lay an effective foundation for a motion for summary judgment on the issue of liability in other tort suits by persons arrested at the Jackson bus terminal(s) in 1961. If denied, the other plaintiffs should refuse to plead further and take an appeal, for the sake of economizing on costs in subsequent suits. By bringing these suits on behalf of groups arrested on each occasion (rather than individually), and with the expenses of trial limited solely to the issue of damages, a sufficiently economical mode of proceeding may result which would justify the bringing of such subsequent tort suits. Proceeding successfully by motion for summary judgment in other types of situations may also be possible.

is a good question. A further incidental problem is that although the jury might be directed to award the costs of the civil proceeding by a totaling of ~~the~~ detailed items as of the time of trial, post-trial expenses, involved in an appeal, can not be measured as of trial time. This might be cured, however, by the Court refusing to accept an unrealistic jury award, returning the jury for further deliberations until such time as the ~~jury~~ award is "reasonable." Presumably, it would be helpful if a concrete idea of the civil ~~costs~~ expenses could be gathered from the record. The present record contains no itemization or even indication of these expenses, nor were instructions submitted on this point. It is, therefore, very doubtful if the question of recovery of civil ~~expenses~~ can be raised in a suitable manner in the present appeal. (It can be presumed that, barring developments in some other case prior to the date of retrial, the district court will rule adversely to inclusion of civil expenses among compensatory damages; a second appeal, to raise this question, seems very likely unavoidable.) There is also a possibility that, under either the false imprisonment claim, or the Civil Rights claim, "malice", justifying punitive damages, can be established as a matter of law. (Nesmith suggests this in rare cases)*1 Whether there is any difference between malice as one of the technical elements in a malicious prosecution count and as the basis for a recovery of punitive damages would be important, since the former may not, but the latter may, require a jury "finding".*2

It is conceivable, however, that, upon malice-as-a-matter-of-law existing a somewhat more conventional method of recovering civil attorneys' fees might be opened up, at least under Claim I, via an award for punitive damages, the jury being obliged to return for further deliberations until a reasonable award is brought in, i.e. one at least covering the expenses of the civil suit.*3 (In subsequent tort suits, the possible advantages of proceeding by mp malicious prosecution should be carefully weighed, if this promises a better route for recovery of damages.)*4 Additionally, the importance of an attack upon the composition of

Footnote 1, page 10: See discussion of "intent" in paragraph 3 of the analysis. To justify punitive damages the wrongful act must "result from gross disregard of the rights of the complaining party" or be "intentional" under Mississippi law, according to Atkinson v. Dixie Greyhound Lines, 143 F.2d 477, 479 (CA5, 1944), citing Mississippi cases. For a Mississippi case holding plaintiff entitled to a peremptory instruction on the issue of liability, where motive was involved, see State for the Use of Little v. US Fidelity & Guaranty Co., 64 So2d 697, 217 Miss 576 (1953). In the Little case the court stated:

> "In Brown et al v. Kismer, 192 Miss 746, 6 So2d 611, the opinion of the court stated: '...it was held in the case of State Life Ins. Co of Indiana v. Hardy, 189 Miss 266, 195 So 708 that the term "malice" in the law of malicious prosecution means that the prosecution was instituted primarily because of a purpose other than that of bringing an offender to justice, such as for instance the resort to criminal prosecution for the purpose of collecting a debt, wherein the unworthy motive alone supplies the necessary element of legal malice, though no actual malice be otherwise shown. 3 Rest.Torts 380, Sec. 653; Odum v. Tally, 160 Miss 797, 134 So 163; Grenada Coca Cola Co. v. Davis, 168 Miss 826, 151 So 743; and O'Bryant v. Coleman, 169 Miss 776, 152 So 59, 154 So 259."

For another false imprisonment case where a p i was granted, see Laster v. Chaney, 180 Miss 110, 177 So 524 (1937)(arrest without probable cause; felony).

Footnote 2, page 10: That the former may not in Mississippi see the Little case in the preceeding footnote. The awarding of punitive damages seems to be entirely within the province of the jury under Mississippi cases, see Mississippi Digest Vol 5A Damages Key No. 208(8). (To what extent, if so, this would govern Claim I is not entirely clear.)

Footnote 3, page 10: The great weight of authority in Mississippi seems to be against any power on the part of the court to control the award of punitive damages (see preceeding footnote) though an inadequate award as to compensatory damages is cause for reversal and retrial, see, e.g. Murray v. Murray, 125 So2d 82, 239 Miss 691; Vaughan v. Bollis, 73 So2d 160, 221 Miss 589; Vascoe v. Ford, 54 So2d 541, 212 Miss 370. Although in Harris v. Sims, 155 Miss 207, 124 So 325 (1929) the court was probably speaking only of compensatory damages (for pain, discomfort, and humiliation) it stated broadly: "In a suit for damages based on false imprisonment, the question is one for the jury, whose finding [as to damages] is not to be disturbed, unless the court can now say that the verdict evinces passion or prejudice on the part of the jury." (emphasis supplied) There seems to be little authority to be found in Mississippi cases dealing with the recovery of attorneys' fees, as such, but presumably the Mississippi rule is the common one. As noted previously, Mississippi law is not necessarily binding in these regards so far as Claim I is concerned.

Footnote 4, page 10: As discussed in my letter of March 17, Section 732 of the Mississippi Code limits the time in which false imprisonment suits can be brought to one year from when "the cause of such action accrued," whereas a 6-year period seems to govern malicious prosecution suits. On the assumption that, upon conviction after trial de novo in county or circuit court, the chain of causation produced by the initial arrest is broken and an action for false imprisonment has "accrued" then any additional tort suits by persons arrested during the Freedom Rides would presumably have to be brought on a malicious prosecution theory, anyway.

federal jury lists and venires (but principally the lists) in event of retrial should not be underestimated. There is no hope for fair or moderately sensible, independent, jury deliberations in Mississippi federal courts in civil rights matters until the jury lists are at least made representative of the general population, including both negroes and women, and the direct or indirect use of state court lists is suppressed. And see the following paragraph.

6. Several juror selection problems arose at trial: (1) denial of motions to dismiss for cause on the ground of acquaintance with Watkins or Spencer (Record p. 4a, 4vv); and (2) refusal to allow two questions to be put to jurors: whether the juror believed a citizen may ever disobey a policeman's order (Record p. 41), and whether he believed negro and white clergymen have a right to ~~might~~ go to a bus station together (Record p. 4v). Of these issues, the last seems important enough to ~~to~~ raise on appeal. (Presumably the second can, as the court said, be covered in its instructions to the jury; most people will not be unhappy ~~be happy~~ to learn that a policeman can be sued for an improper order; and the first issue is probably unprofitable to pursue?) It would seem basic that the plaintiffs are entitled to some kind of juror-selection question which will secure a reasonably "fair-minded" jury, capable at least of embracing the possibility of a mixed group lawfully and properly traveling together under certain circumstances. It is perhaps useful in this connection that both Nichols and Griffith, the record reveals, believed it "wrong" for negroes and whites to be together (Record p. 280-281, 296) and one may assume some or all jurors believed likewise. In the area of civil rights tort suits the integrity of the law itself is rendered nill by a jury so minded as to disbelieve in and deny the existence of the civil right at issue. The Court of Appeals should be asked to direct the district court to dismiss for cause potential jurors not believing in the appropriateness of negroes and whites traveling together under peaceful circumstances.

7. Lastly, the conduct of the trial from the outset was prejudicial to plaintiffs and a very great number of the Court's rulings or remarks constitute reversible error, including failure on two occasions to declare a mistrial -- see Record p. 58-59, 73 -- or to grant a motion for a new trial -- see Record p. 416. Since it is likely that retrial on the issue of damages will be ordered, and similar issues are likely to arise again in this and similar cases, it is important that the District Court be straightened out on as many of these matters as the Court of Appeals can be induced at one time to tackle. The most significant items of this nature in the record are:

I.A. The Court's view that jury-prejudicing matter is curable in a case of this nature (or any case) by the Court's ultimate instructions at the conclusion of the evidence: see Record 39-41 and 145 for the Court's explicit statements to this effect. (On p. 47 Court indicates a certain awareness of the difficulty of eradicating prejudicial incidents once in, but its rulings throughout, and ultimate instructions, were not so oriented.)

I.B. (see pages 15-17 infra, this analysis)

II.A. The Court's view that in a false-arrest, Civil Rights, tort suit of this kind a "wide latitute" should be allowed in the questioning of witnesses and introduction of evidence (applied, however, almost entirely to the advantage of defendants, see III infra, pages 17-18) that the purpose and complete background of plaintiffs' presence at the terminal was relevant, and evidence bearing on this competent: p. 36 ("The background of this lawsuit is such that a wide latitute will be allowed both sides for the introduction of their testimony."), p. 181-182 ("I am thoroughly convinced the testimony is competent for a determination of the ultimate question in this case."), p. 356 (plaintiffs' counsel ordered to desist from argument over questions of relevancy), jury not instructed at close of evidence to disregard any of the evidence received in during the trial.

II.B. In keeping with this view, and largely in the form of allowing cross-examination of witnesses called by plaintiffs (on matters beyond the scope of their testimony on direct examination, despite timely objection by counsel to this error, Record p. 36-37, including a motion to strike the entire cross-examination of Reverend Jones, p. 75, overruled), the court allowed the following catelog of questions to be put to plaintiffs' witnesses and/or received into evidence, all in the presence of the jury: (Note: objection was usually made specifically by counsel, but a "standing objection" was also allowed: p. 46, 102, 241, 339)

and objective
1. What was plaintiffs' general purpose/ in traveling as a mixed group
of clergymen and coming to Jackson? see, e.g., p. 103, 185

pamphlet
~~pamphlet~~ relative to the general purpose of the prayer pilgrimmage
allowed into evidence: p. 36

correspondence, ~~letters~~ of Rev. Morris, with group members prior
to commencement of trip allowed into evidence: p. 107-114
after
(~~C~~ourt examination to determine which letters "relevant"~~)~~ and
212,
"competent"), 145-146, 158, 170,/338

"in agreement
2. Was ~~the~~ plaintiff (or the group) ~~"in/agreement~~ with any or all
of"~~4~~"a list of [nine] demands reported by the Daily Worker of
May 26, 1928" as representing the demands of the Communist Party
for racial justice in the United States? p. 57-66

this
objections to ~~the~~ question on ground without useful purpose and
and motionsto strike from jury's mind and admonish coun-
done deliberately to inflame jury/denied: p. 58 sel

motion for mistrial denied: p. 58 (motion renewed after verdict: p. 416)

(Daily Worker copy not received into evidence, on ground not
"properly authenticated" p. 66)

plaintiffs'
3. Did ~~the~~ plaintiff, or/group, "endorse and approve the purposes and
activities of those groups which called themselves Freedom Riders?
p. 46, 51, 120, 147

4. Was the witness familiar with earlier events at the bus station
in Jackson that summer, and events in Alabama during which "violence"
occurred, connected with the Freedom Riders? p. 45, 115, 119, 251,
355-356 (Ray on direct), 370 (Nichols on direct), 379 (Griffith
on direct)

5. Was the group advised not to come to Jackson? p. 39

6. Did the group anticipate a tense situation upon arrival in Jackson,
or violence, and was it worried about this? p. 135-136, 151, 251

7. Did the group have some doubt about the wisdom of coming? p. 157-158

8. Was an agreement with CORE reached in advance concerning legal asistance? What are plaintiffs' counsel's connections with CORE? Who represented plaintiffs earlier? Was counsel present the day before the group went to the bus station? p. 53-54, 132, 135, 186, 188, 189, 196, 213-214, 157, 339

9. Did plaintiffs' group "want" to go to jail? Were a certain number of the clergymen "selected" for this? p. 137, 149, 154, 178, 179, 189, 197, 202-204, 205, 215, 236, 340, 343-344

10. Was it contemplated that bail might be intentionally refused? From whom was bail to be obtained? p. 150, 178, 186-187, 191, 193-194, 201-202

11. Who paid for the trip? p. 67, 131-132/175

12. Did plaintiff meet with the field secretary for CORE in Mississippi? p. 133

13. What was the purpose of starting the group's trip in New Orleans? What were the details of the group's evening in New Orleans? p. 69-70, 72, 74, 176-177, 186, 209, 246

14. Had it been planned to start in Jackson at one time? p. 176, 183

15. Was Rev. Wyatt T. Walker's advice in New Orleans "helpful"? p. 247

16. Was the trip discussed in advance with Rev. Martin Luther King, Jr. and a statement issue by him? p. 159-160, 171 (statement referring to/ the pilgrimmage as "implementing the spirit of the Freedom Rides")

17. What advance/and post publicity did the group want, and what publicity did it receive for its movements? p. 135-136, 160, 171, 180, 181, 198, 345, 370 (Nichols had heard of group's presence and intentions), 381 (Griffith, ditto)

18. Had the plaintiff ever/tried "physically" to "integrate" any facility on an earlier occasion? p. 55, 242-243, 351

19. Why didn't the group integrate anything in New Orleans? p. 211-212

20. ~~Was~~ Is segregation practiced in the North, in other churches and cities than Jackson? p. 55, 56, 102, 134

21. ~~Did~~ Do plaintiff's children attend a segregated private church school? p. 127

~~22. Might not the plaintiffs have spent their time better in attending to racial discrimination in at home? p.~~

22. What is meant by the ~~reference to~~ description in the group's pamphlet of ~~church~~ segregation within the Episcopal Church as an "insidious custom"? p. 105-106

23. What was meant by Rev. Morris by his phrase (in a letter) referring to the group as "front line fighters in the field of civil ~~rights~~ rights"? ~~p.~~ Can a Christian minister be a civil rights "militant"? p. 155, 156, 174, 207-208

24. Why did the Reverends Zimmer and Boyd go to the terminal that morning in plain clothes? p. 123-124, 344

25. Did a crowd gather after the arrest and as the group was being put aboard the paddy wagon? p. 145

26. Did plaintiff object to Judge Moore's dismissal of the charges against the group? p. 126-127

27. Where did the group spend the previous night in Jackson? p. 212

28. Does the plaintiff believe in intermarriage of the races? p. 255

C. Similarly, on direct examination (as indicated in question 4 above) the defendant officers were allowed to testify regarding events of a month or more earlier at the terminal and in Alabama, and to testify to the "reaction" of the "people of Jackson" to the visits by plaintiffs' group -- Record p. 357, 381

IB

A large number of incidents of substantial jury-prejudicing effect in addition to IIB occurred, some, upon objection to counsel's question, sustained by the court, but their cumulative effect was not counterbalanced by the court's remarks (or instructions) to the jury; ~~the court's remarks in fact materially contributing to the prejudicial effect of incidents of the trial.~~ Significant items in order of occurrence are:

p. 4tt : effort by defendants' counsel to label plaintiffs "freedom riders" (objection sustained by court in this instance; counsel's efforts in this direction are a repeated theme of the record; a very strong emotional reaction occurred in Mississippi to the "freedom rider invasion") (See p. 115 where question referring to "invasion" allowed)

p. 7 : inflammatory opening statement of the case by defendants' counsel (objection sustained; jury advised to disregard the remarks of both lawyers) (opening statements not reported in the record)

~~[p. 40 : Court states in ruling question material and nonprejudicial: "...as I understand the law it is that while people have certain rights, yet there are limitations on practically every right or every freedom that is given to the people under the Constitution of the United States; and if they abuse that privilege, then the officers, in order to prevent a riot, in order to prevent bloodshed, or in order to prevent any difficulty that they can reasonably foresee, they have a right under the law to direct that people shall move on." (In this connection see also: p. 402-403]~~

p. 57 : Objection sustained to following question: "Don't you think, Reverend Jones, that your activities could have been better spent by trying to correct what you considered improper discriminatory practices in Illinois, rather than coming to Jackson, Mississippi?" (See similar line of questions p. 134-135)

p. 73 : Reverend Jones asked if he "got into plain clothes and went down to Bourbon Street", New Orleans. Objection sustained. Counsel (Watkins) then remarked: "No nasty implications. That's exactly what the witness said, that they wanted to see New Orleans." Second Motion for Mistrial made, overruled.

p. 51-52 : Witness asked questions concerning an article in Redbook magazine entitled "Rebel in the Rockefeller Family." (objection sustained) (See similar questions, to which objection also eventually sustained, p. 263, 265)

p. 115 : Reverend Morris asked: When discussions of the pilgrimmage took place in June 1961 "the Freedom Ride invasion of Jackson, Mississippi was in full bloom, was it not?" (objection overruled)

p. 120 : Court orders Watkin's remark "I realize you are not willing to state openly that you are Freedom Riders" stricken and to be disregarded by the jury.

p. 131-132 : Counsel (Watkins) states aloud, after objection to question sustained as to who paid attorneys fees of $300 for criminal proceeding, is reason for asking the question: "That one or more organizations financed this entire trip."

p. 135 : Reverend Morris asked if Bill Higgs was originally an attorney in the present case (objection sustained; "Bill Higgs" is of course now a notorious name in these parts)

p. 147 : Court orders Watkin's remark, "Well, it is becoming easier. I can see that." stricken.

p. 239-240 : Reverend Pierson asked whether gainfully employed at the time of the arrest (objection sustained)

p. 347 : Reverend Zimmer asked: "If we put it in military terms, you were there as a spy, weren't you?". Objection sustained. Rachlin: "Your Honor, I ask Mr. Watkins not to inflame the jury. Court: Well, you make your objections and I will rule on them."

p. 393 : Judge Spencer asked if he is an Episcopalian (objection sustained)

III Nor were plaintiffs permitted to ask certain questions ~~which~~ ch should have been allowed, nor permitted, as required by Rule 43(c), to make a record of excluded proof, of matter falling within the Rule, out of the presence of the jury.

Items of particular interest and importance are:

questions not permitted of Spencer: Does a citizen have a right to disobey an unreasonable policeman's order? (Record p. 305-306, 317, question put in sev eral different forms); Would it be proper for a negro to disobey a local police order restricting a bus station waiting room to whites only? (Record p. 311-314; Rachlin: "He is a judge. We are entitled to ask a legal conclusion of a judge." Court: "The fact that he was the judge is immaterial." Rachlin: "We have to try his state of mind at the time he tried this case...whether under the circumstances , these plaintiffs got a fair trial." Court: "His state of mind is immaterial in this case. He was a judge confronted with a serious proposition; and if he made an error, it's an error of judgment on his part, for which there would be no responsibility against the judge and would throw no light whatsoever upon this lawsuit..."); With the knowledge of Judge Moore's reversal, would he convict the plaintiffs again? (Record p. 315); Whether he normally appeared in his courtroom with the Articles of religion of the Episcopal Church? (Record p. 320-324)

question not permitted of Griffith: Would he, with knowledge of Judge Moore's reversal, make the same arrest again? (Record p. 384)

proffers not allowed: statement by Reverend Woodward: p. 221-222; 322-324 questions and answers in Spencer's deposition: p. 306-324, esp. p. 306, 308, 316/ (p. 314: Rachlin: "I would like, Your Honor, to ask for the jury to leave the room for a moment so that I could state on the record the point of law I think is relevant at this very moment. Court: I decline to do that for the reason that under the law of this circuit and the St ate of Mississippi you are entitled to the most favorable answer you could possibly get from a personal review, so there is no need for you to state it on the record and consume that much time. Let's go on.)

IV. Since the text of proposed instructions to the jury are not included within the Record, comment upon them is not offered separately (relevant instructions have been mentioned passim) other than to note that counsel excepted (Record p. 414) to the Court's comments upon the instructions given as prejudicial to plaintiffs (Record p. 407A) and as giving "inadequate consideration to the possibility of a recovery by the plaintiffs."*1

8. In event of retrial (including retrial on the issue of damages) certain changes in trial technique might be attempted as a means of reducing jury antagonism:

- effect jury removal during argumentsover competency, materiality, prejudicial effect of questions, or offered evidence* (or, as perhaps a more workable alternative, approach the bench for low-voiced discussion) (the jury can be removed fairly easily from the small, new Fifth Floor courtroom in Jackson) (*this might be raised with the Court of Appeals)
- if the purposes of the prayer pilgrimmage must be gone into (as, to establish that the group was engaged in bona fide interstate travel) the equal North-South emphasis in the itinerary should be stressed (i.e., that racial discrimination is not a southern problem; from the Church's standpoint is universal)
- where the group spent the night in Jackson should be avoided (Tougaloo is in bad odor segregationists hereabouts)
- wearing the clerical costume might well be avoided altogether, except possibly for Breeden (a white collar locally is associated with Catholic priests; ~~and~~ there is considerable prejudice, among Baptists especially here, against the Catholic Church)
- similarly, references to the group as "priests" or addressing plaintiffs as "Father" would be better replaced with calling them "ministers" and "Reverend"
- waiving or making very brief opening and closing arguments with agreement opposing counsel will do the same* should be considered (it is too easy for prejudicial remarks to be made in this medium; a record should be requested, in any event, of all remarks made in the presence of the jury)

(*upon investigation, it does not appear that waiver by plaintiff will prevent summation by defendant, but the court may, in its discretion, limit argument)

Footnote 1, page 19: The instructions appear erroneous on the issue of burden of proof, also, but it is does not appear that plaintiffs excepted to this error. For the burden of proof in false arrest cases in Mississippi, see particularly Harris v. Sims, 155 Miss 207, 124 So 325 (1929) and Carlisle v. City of Laurel, 124 So 786, 156 Miss 410 (1929). The court said in Harris v. Sims: "It is...contended that it was error to instruct the jury that the burden of proof shifted to the defendant if and when plaintiff had shown he was arrested without a warrant." "The defendant had interposed the affirmative plea that he was justified in arresting without a warrant, because the plaintiff was drunk, or was threatening or attempting a breach of the peace. This being an affirmative plea, the burden of proof...was upon the defendant."

Pierson, Robert L. et.al vs. Ray, J.L. [illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Robert L. Pierson, John B. Morris, James P. Breeden, and James G~~arrard~~ Jones,	Plaintiffs
v.	No.__________
J. L. Ray and James L. Spencer J.B Griffith & D.A. NICHOLS	Defendants

COMPLAINT

Jurisdiction:

1. Jurisdiction is based upon 28 U.S.C. 1343 1,2 and 42 U.S.C. 1981 and 1983 and upon 28 U.S.C. 1332.

2. Each Plaintiff has been damaged in an amount greater than $10,000.00, exclusive of interest and costs.

Nature of Cause of Action:

3. This cause of action is a civil action for damages for deprivation of civil rights and for false arrest and imprisonment of Plaintiffs by Defendants.

Plaintiffs:

4. Plaintiff Robert L. Pierson is an adult male, an Episcopal ~~Rector~~ CLERGYMAN, amember of the caucasian race, and a citizen of the State of New York.

5. Plaintiff John B. Morris is an adult male, an Episcopal CLERGYMAN ~~Rector~~, a member of the Caucasian race, and a citizen of the State of Georgia.

6. Plaintiff James P Breeden is an adult male, an Episcopal CLERGYMAN ~~Rector~~, a member of the Negro race, and a citizen of the State of MASSACHUSETTS ~~Illinois~~.

7. Plaintiff James G~~arrard~~ Jones Jr. is an adult male, an Episcopal CLERGYMAN ~~Rector~~, a member of the Caucasian race, and a citizen of the State of ILLINOIS ~~California~~.

Defendants:

8. Defendant J. L. Ray is a policeman and a member of ~~on~~ the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

8a 8b

9. Defendant James L. Spencer is the ~~duly appointed~~ Police Justice and Ex officio Justice of the Peace municipal judge of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of the State of Mississippi.

The Factual Situation :

10. On September 13, 1961, Plaintiffs and eleven other Episcopal CLERGYMEN ~~Rectors~~ -- among whom were two ~~three~~ members of the Negro race and NINE ~~twelve~~ members of the Caucasian race ~~--~~ traveling in a group in an orderly fashion entered the Continental Trailways Bus station in Jackson, Mississippi, about 11:30 A.M. for the purpose

of continuing their journey from New Orleans, Louisiana, to Detroit, Michigan. At All ~~were possessing~~ possessed tickets to Chattanooga, Tennessee at such time. The group entered through ~~the~~ a front door ~~on~~ of the ~~right side~~ of the station, in front of which was a sign ~~indicating to the effect~~ stating in substance of "White Waiting Room Only -- By Order of Police Department."

~~11~~. Defendant Ray ~~then~~ thereafter approached Plaintiffs and told them to move on. Plaintiffs refused to do so and were then placed under arrest by Defendant Ray and taken to the Jackson City jail.

12. Plaintiffs Pierson, Morris, and Breeden were held in jail until Tuesday, September 19, 1961.

13. Plaintiff Jones was held in jail ~~until a week or more~~ for a period of approximately ~~were released~~ 10 days after the other Plaintiffs were released.

14. Plaintiffs were held, tried, and convicted upon affidavits of Defendant Ray alleging that Plaintiffs "on of about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississipps, under such circumstances that a breach of the peach might have been occasioned thereby, did then and there

congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there wilfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi."

15. Defendant Spencer was the judge at the tial held on Friday, September 15, 1961, without a jury, at which trial Plaintiffs were tried and convicted on the affidavits memtioned in paragraph 12, supra, and on the testimony of Defendant Ray. The convictions were based upon violations of Section 2087.5 of the Mississippi Code of 1942, as amended. Plaintiffs Pierson, Morris, and Breeden posted bond and were released from jail on Tuesday, September 19, 1961.

17. Plaintiff Jones posted bond and was released from jail more than a week after the other Plaintiffs.

18a. At no time was there any unusual gathering, occurrence, or circumstances ~~in or~~ near the vicinity of the bus station at or near the time of the arrest of Plaintiffs, nor did any person present including plaintiffs, create any (except for the presence of Plaintiffs and their companions -- an integrated group racially -- in the station's "white" waiting room). The ~~only disturbance~~ disturbance or commit any disorderly act whatsoever ~~that might possibly have occurred was caused by Defendant Ray's arrest of Plaintiffs in the presence of other assisting policemen~~.

19. The Plaintiffs duly appealed to the Hinds County Court as provided under Mississippi law from the Jackson Municipal Court. ~~Judge Russell Moore~~ of the Hinds County Court at first was going to proceed with the appeal trial against Plaintiffs and Plaintiffs were compelled to return to Jackson for the arraignment on October 9, 1961. Judge Moore then decided, in conjunction with the city prosecutor, to dismiss the cases in favor of Plaintiffs. This decision was changed when Plaintiffs announced that they did not desire preferential treatment because of their station as ministers -- treatment different from that of other persons disobeying the racial segregation signs and arrested therefor in the transportation facilities in

~~Jackson. It was then announced by Judge Moore that Plaintiffs would now be prosecuted and than their cases would not be dismissed. Plaintiffs then began to arrive in Jackson for their scheduled trials beginning May 21, 1962. It was then agreed between Judge Moore, the city prosecutor, and Plaintiffs' attorneys that the cases would be dismissed by the entering of nolle prosequi's by the city prosecutor.~~

20. The cases were then dismissed by the agreed entering of the nolle prosequi's.

Claim I:

21. Defendants, acting severally and in concert, under color of law ~~and~~ under and particularly under color of Section 2087.5 of the Mississippi Code of 1942, as amended, and under color ofthe customs and usages of the State of Mississippi dealing with segregation of the Negro race from the Caucasian race subjected and caused to be subjected Plaintiffs to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States in that defendants have arrested, convicted and sentenced Plaintiffs to jail and confined Plaintiffs therein for the sole purpose of enforcing the segregation laws, customs, policies, and

usages of the State of Mississippi.

22. Plaintiffs have been deprived of their rights, privileges, and immunities to travel freely among the States of the United States, and of the several states to equal protection of the laws, and to due process of law, among other rights, privileges, and immunities guaranteed by the Constitution and laws of the United States. These rights, privileges, and immunities are guaranteed, in particular, by Article I, Section 8, Clause 3, and the 14th Amendment of the Constitution of the United States and laws passed pursuant thereto.

Claim II:

23. Plaintiffs have been intentionally falsely arrested, confined, detained, and imprisoned by Defendants, acting severally and in concert, without legal cause, process, or justification, which Defendants were well aware of at and during Plaintiffs' arrest and confinement. At no time about the occasion of the arrest was there any facts authorizing Plaintiffs' arrest by Defendants under the section of the Mississippi law with which Plaintiffs were charged with violating, Section 2087.5, or under any of the other laws of the State of Mississippi. Plaintiffs were arrested solely to indirectly enforce the patently unconstitutional purpose of the State of Mississippi as articulated in Section 2351.7 of the Mississippi Code of 1942, as

amended, prividing for criminal penalties for those persons violating the segregation practice in transportation terminals of members of the caucasian race only using one side of the terminal and members of the Negro and other colored races only using the other side.

Statement of Damages:

24. Plaintiffs have each been injured and damaged by Defendants' acts against Plaintiffs in the amount of $11,000.00 for each Plaintiff and each Plaintiff has further been forced to expend the sum of $1,500.00 as a direct and proximate result of protecting and defending himself against the acts of Defendants.

Prayer for Relief:

25. Wherefore, each Plaintiff demands judgemtn against Defendants, jointly and severally, in the amount of $12,500.00, for a total judgment against Defendants of $50,000.00.

26. Plaintiffs request such other and further relief as is just.

27. Plaintiffs demand that defendants pay the cost of this action.

Carl Rachlin
280 Broadway
New York, New York

William Higgs
Box 4863
Jackson 6, Mississippi

Attorneys for Plaintiffs

FIND IT FAST IN THE Yellow Pages

Pierson v Ray

Form [illegible]
(2-63)

MEMORANDUM

NOV 23 1964

November 20, 1964

TO Carl Rachlin

Nothing new in Supplement to brief for appellees.

Nothing we can do about material any way since the matter has already went to the court.

Jur file
Pierson v Ray

FROM R. H. Rosenthal

ADDRESS

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

NO. 21, 325

ROBERT L. PIERSON, ET AL, APPELLANTS

VS.

J. L. RAY, ET AL, APPELLEES

SUPPLEMENT TO BRIEF FOR APPELLEES

E. W. STENNETT
City Attorney
Jackson, Mississippi

THOS. H. WATKINS
Suite 800 - Plaza Building
Jackson, Mississippi

ATTORNEYS FOR APPELLEES

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

ROBERT L. PIERSON, ET AL, APPELLANTS

VS. NO. 21,325

J. L. RAY, ET AL, APPELLEES

SUPPLEMENT TO BRIEF FOR APPELLEES

SUPPLEMENT TO POINT I

Legal arrest is always a defense to false imprisonment. An arrest without a warrant is often, especially in cases of breaches of the peace, legal and therefore a complete defense if the officer had reasonable grounds of belief of the guilt of the plaintiff at the time of the arrest, i.e. had probable cause.

Appellant in its reply brief argues that probable cause is not a defense to this action. Appellants take the position that Appellees have confused false imprisonment or false arrest with, on the other hand, malicious prosecution. In this, we submit, Appellants are in error. True, a few malicious prosecution cases were cited for the purpose of showing what the Mississippi Supreme Court considers "probable cause", i.e. sufficiency of certain facts to constitute probable cause. What Appellants are overlooking is that probable cause is always a defense in malicious prosecution but that it is not always a defense for false imprisonment, but that it can be and under some circumstances, as here, is a defense to false imprisonment actions.

There is, of course, a distinction between malicious prosecution and false imprisonment. However the distinction is a practical matter applicable principally on the issue of burden of proof.

As stated in 35 C.J.S., False Imprisonment, p. 625:

> "Put briefly, the essential difference between a wrongful detention for which an action for malicious prosecution will lie, is that in the former the detention is malicious but under the due forms of law, whereas in the latter the detention is without color of legal authority. In malicious prosecution plaintiff must allege and prove malice and want of probable cause and the termination of the proceeding favorably to plaintiff, whereas in false imprisonment it has been stated that the allegation of want of probable cause is not essential, and the burden is on defendant to prove probable cause as a defense or in mitigation." (Emphasis added.)

The question of burden of proof is not important here. Appellees pled and proved probable cause.

As stated, probable cause is not always a defense to a false imprisonment action. For example, an officer makes an arrest under an invalid warrant but not under circumstances justifying an arrest without a warrant and probable cause is not a defense. However, in many instances where, as here, an arrest is made without a warrant, the arrest can be still legal and on the question of whether or not it is legal probable cause is frequently, particularly in arrest for breach of the peace, an issue and the proof thereof a complete defense.

When the arrest is made under legal process issued by a court, there is no liability for false imprisonment. King v. Weaver Pants Corporation, Miss., 127 So. 718; Gunter v. Reeves, 21 So.2d 468.

However, there is no requirement that the arrest, in order to justify the officer in making it without liability for false imprisonment, be under process issued by the court. The Mississippi statute relieving officers from liability for arrest does not so require, but, on the other hand, only requires that the arrest be authorized, or as required by law. Arrests without a warrant are authorized and can be made as required by law.*

The discussion of False Imprisonment in 35 C.J.S. is clear, full and adequately supported by authority. In an opening general paragraph the text states:

> "There is some confusion in the authorities relative to the necessity for showing a want of probable cause as an element of false imprisonment. While there are broad judicial statements

---

* Section 2474: "Officers and others who make arrests as authorized, or required by law, shall not be liable on account thereof, civilly or criminally, notwithstanding it may appear that the party arrested was innocent of any offense."

> to the effect that 'probable cause' is no defense in false imprisonment cases and that the want thereof is not an essential element of the tort, and while it is clear that 'probable cause' cannot justify a false imprisonment in so far as its presence merely negatives the existence of actual malice, nevertheless it would seem that 'probable cause' in the sense of reasonable ground for effecting an arrest or detention, as discussed infra § 25, may afford a defense to an action for false imprisonment in so far as the presence of such 'probable cause' justifies the arrest or other restraint and therefore precludes it from being unlawful or 'false.'" p. 631

The requirement as to liability is stated on page 639 to be "The detention or restraint must...have been illegal."

The text then under the general heading of "Unlawfulness of Restraint" discusses under Sections 26 to 28 "Detention of Restraint under Process" and under Sections 21 to 25 discusses "Detention or Restraint without Process."

In Section 25, p. 657, the text discussing "Reasonable Grounds of Suspicion", exactly the same thing as probable cause, states the rule as follows:

> "Reasonable and probable grounds for suspicion of the guilt of a person arrested which may, under the circumstances considered supra §§ 21-24, constitute a justification for his arrest without a

> warrant, and constitute a defense in an action for false imprisonment, are ordinarily regarded by the courts as equivalent to reasonable and probable cause for a belief in his guilt, although by other authorities a distinction has been drawn between suspicion of guilt and belief in guilt...
>
> "Whether such grounds exist must be judged by circumstances existing at the time of the arrest, and does not depend on the actual guilt or innocence of the person arrested...."

Therefore, remembering that legality of the arrest even without a warrant is a complete defense, the question before this Court in this case is: WAS THE ARREST LEGAL? The Mississippi cases amply sustain the position that in determining this question the issue of probable cause is pertinent and controlling and that the arrest without a warrant was legal if the arresting officers had a reasonable ground of belief and did believe that the crime was being committed in their presence. This is particularly true with reference to breach of the peace arrests.

Section 2470 provides:

> "An officer or private person may arrest any person without warrant for an indictable offense committed, or a breach of the peace threatened or attempted in his presence."

By Section 2087.5 one commits a breach of the peace if he congregates with others in a public place with either the intent to provoke a breach of the peace or "under circumstances such that a breach of the peace may be occasioned thereby."

Here Appellants congregated in a public place and refused to move on on order of the officers under such circumstances that the officers had reasonable grounds to believe that a breach of the peace might occur and did so believe. The arrest was, therefore, legal because the circumstances constituted probable cause and justified the officers in believing that a breach of the peace was imminent.

The leading case and the controlling case here is Forsythe v. Ivey, Miss., 139 So. 615, a civil action for damages for false imprisonment or arrest, cited and quoted from on page 15 of our original brief. The arrest had been without a warrant on a charge of drunkenness in a public place and the Court held that the defendant should have been granted an instruction to the effect that if the jury believed that the plaintiff at the time of the arrest so "conducted himself as to lead a reasonable and prudent person to believe that he was drunk and that ...(the officers) acting in a reasonable and prudent manner, did believe the plaintiff was drunk, or was about to commit some breach of the peace...then they had a right to arrest the plaintiff and put him in jail, and it will be your duty to render a verdict for the defendants."

There is no difference between the statement that it is a complete defense if the officer had a reasonable ground to believe and did believe that the person arrested was about to commit a breach of the peace and saying that it is a complete defense that the officer making the arrest had probable cause to make the arrest.

Respectfully submitted,

E. W. STENNETT
City Attorney
Jackson, Mississippi

THOMAS H. WATKINS
Suite 800 - Plaza Building
Jackson, Mississippi

CERTIFICATE

The undersigned of counsel for Appellees certifies that a true and correct copy of the foregoing Supplement to Brief has this day been personally delivered to: ______________________________, attorney of record for Appellants.

This the _____ day of November, A. D. 1964.

____
OF COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON, MISSISSIPPI

ROBERT L. PIERSON, JOHN B. MORRIS, JAMES P. BREEDEN, AND JAMES G. JONES, JR.	PLAINTIFFS
VS.	NO. 3315
J. L. RAY, J. B. GRIFFITH, D. A.	DEFENDANT

MEMORANDUM OF THE PLAINTIFFS ON THE ISSUE OF DAMAGES

COMPENSATORY DAMAGES

A successful plaintiff in an action for false imprisonment is entitled to compensation for all the actual injuries shown to have been sustained by him, which are the proximate result of defendant's wrongful act and its natural and proximate consequence.

In the present case there was an illegal infringement of the legal rights of the plaintiffs; namely the right to travel freely among the several states as guaranteed by Article 1, Section 8, Clause 3, and the 14th Amendment of the Constitution of the United States. Therefore, there is as a matter of law a presumption of damages in the present case. Mississippi law recognizes a presumption of damages when there has been a legal right infringed upon. The Mississippi Supreme Court speaking through Justice Cook in the case of Doherty v. Mississippi Power Co., 178 Miss. 204, 173 So. 287, stated:

> "The Law presumes damages from the infringement of a legal right."

Concerning ourself now with the issue of whether or not the necessary expenses incurred by the plaintiffs in obtaining their release from the Jackson, Mississippi City jail constitutes real and actual damages we find that the Mississippi law governing this question is in full agreement with the contentions of the plaintiffs that such expenses constitue actual damages. Justice

Hall speaking for the Mississippi Supreme Court in the case of Vining et al. v. Smith, 213 Miss. 850, 58 So. 2d 34, stated:

> "As a general rule, a party is entitled to all legitimate expenses that he may show to have been incurred by him in an honest endeavor to reduce the damages flowing from or following the wrongful act"

Further, Justice Wood speaking for the Mississippi Supreme Court in the false imprisonment case of Hewellette v. George, 68 Miss. 703, 9 SO. 885, 13 L. R. A. 682, recognized such expenses as constituting actual damages thusly:

> "We can not consent that actual damages in this case must be confined to the few dollars and cents shown to have been expended by plaintiff to secure her release from the asylum,........"

Turning our attention now to the question of whether or not the time lost during the illegal confinement of the plaintiffs in the Jackson, Mississippi city jail, the mental pain suffered by the plaintiffs due to their illegal arrest and illegal confinement, the shame and mortification of the plaintiffs suffered due to their illegal arrest and illegal aonfinement, and the injury to the plaintiffs' character due to their illegal arrest and illegal detention, would constitute real and actual damages, we find that each of these injuries are of such a nature that in an action for false imprisonment they each constitute an actual injury for which an award of compensatory damages may be given. Justice Wood while speaking for the Mississippi Supreme Court recognized each of these injuries as being an actual injury in the false imprisonment case of Hewellette v. George, 68 Miss. 703, 9 So. 885, 13 L. R. A. 682. He stated the law thusly:

> "Here was actual damages in the extent of $200, and actual damage for 11 days of time lost during confinement in the asylum, and to these should have been added damages for mental pain and suffering, shame and mortification, and the injury to character. Surely there injuries were real ones, and compensation for these would have been an award of actual damages. Compensation and actual damages are one, and compensation for wrongs done to one's character is in no sense punitory. We can not consent that the actual damages in this case, must be confined to the few dollars and cents shown to have been expended by plaintiffs to secure his release from the asylum, and that no compensatory damages were awardable for shame and anguish and hurt to character."

We would like to call to the Court's attention the case of Atkinson v. Dixie Greyhound Lines, Inc., et al., 143 F. 2d 477, ceriorari denied 65 S. Ct. 92, 323 U. S. 758, 89 L. Ed. 607, as being the controling law of the state of Mississippi on the question of exemplary damages in an action for false imprisonment. Because of the similarities of Atkinson v. Dixie Greyhound Lines, Inc. et. al., and the case at bar a short statement of the fact in Atkinson v. Greyhound Lines, Inc., et al. is here given as determined by the jury and the Court:

> "The plaintiff's evidence showed that he worked in a grocery store in Jackson, Mississippi, on a Saturday in January, 1940 until 11:30 that night, having worked over sixteen hours; that when he left his work he went to a coffee shop and ate supper and then entered the defendants' bus station at about 1:15 in the morning; that he went immediately to the ticket window to purchase a ticket to his home at Byron, which was about seven miles south of Jackson, the price of the ticket being 26 cents; that he had a large sack of groceries in one hand and in the other a one dollar bill with which to purchase the ticket; that the agent was busy writing and upon being advised that plaintiff would purchase a ticket to Byron informed him that the bus did not run in that direction until 4:30 that morning; that he made no move to wait upon plaintiff and thereupon plaintiff took a seat in the waiting room; that latter he went up to the balcony to the men's toilet and then seated himself in a seat on that floor which was provided for passengers; that latter on Billingsley, the agent of the defendant, came to the plaintiff and asked him where he was going and when told said, "You have until 4:30" and turned away; when plaintiff made an effort to again purchase a ticket the agent said, "You have until 4:30" and plaintiff kept his seat.
>
> Latter two police officers who had been summoned by Billingsley entered the bus station and Billingsley pointed out the plaintiff and informed the police that the plaintiff had been loafing in the depot for about a week; the officers thereupon seized plaintiff and arrested and searched him and removed him from the bus station to the police headquarters where he was held for about two hours and then released and given his bag of groceries and he walked back through the snow to the station and found that his bus had gone; he waited until 9 o'clock when he boarded another bus and returned to his home. The evidence further showed that plaintiff had been working at Jackson for three months and had been buying tickets at the bus station and riding to his home nearly every day during that time; that he had never been arrested before; that he was sober on the occasion and presented himself at the station in a proper manner; that his deportment and demeanor at all

> times were correct and good; that he was a pas-
> senger of defendants as he was in their bus
> station waiting for his bus; and he was humili-
> ated since many people knew of his arrest and
> imprisonment and that it would militate against
> him in the event he sought new employment."

The Court in its opinion in Atkinson v. Dixie Greyhound Lines, Inc., et al., 143 F. 2d 477, ceriorari denied 65 S. Ct. 92, 323 U. S. 758, 89 L. Ed. 607, stated the following as being the controlling law in Mississippi governing the issue of exemplary damages in a false imprisonment case:

> "Punitive damages: to authorize the infliction
> of punitive damages, the wrongful act complained
> of must be either intentional, or result from
> such gross disregard of the rights of the complaining
> party as amounts to willfulness on the part of
> the wrongdoer. Illinois Central R. Co. v. Ramsey,
> 157 Miss. 83, 127 So. 725, 726; Chicago, St. L. &
> N. O. R. Co. v. Scurr, 59 Miss. 456, 42 Am. Rep.
> 373; 873; Mississippi & T. R. Co. v. Gill, 66 Miss.
> 39, 5 So. 393; New Orleans & N. E. R. Co. v.
> Martin, 140 Miss. 410, 105 So. 864."

> "Punitive damages may be recovered not only for a
> willful and intentional wrong, but for such gross
> and reckless negligence as is equivalent to such
> wrong. A spirit of wantonness and recklessness
> is at war with good faith. An act done in such
> a spirit is oftentimes just as harmful as if
> prompted by malice. Neal v. Newburger Co., 154
> Miss. 691, 123 So. 861, 863; Hines v. Imperial
> Naval Stores Co., 101 Miss. 802, 58 So. 650;
> Godfrey v. Meridian L. & R. Co., 101 Miss. 565,
> 58 So. 534; Yazoo & M. V. R. Co. v. Fletcher,
> 101 Miss. 569, 56 So. 667; Vicksburg Waterworks
> Co. v. Dutton, 98 Miss. 209, 53 So. 537."

> "That a case of false arrest or malicious prose-
> cution in Mississippi can be such as to call for
> the infliction of punitive or exemplary damages
> is no longer in doubt. When an arrest has been
> made and imprisonment imposed and the evidence
> shows no legal grounds therefor, such conduct
> has been characterized as such gross wrong as to
> envince a wanton or willful disregard of the
> rights of others, and if so, then the question
> of punitive damages under proper instruction by
> the court becomes a question for the jury.
> Laster v. Chaney, 180 Miss. 110, 177 So. 524;
> Bounds v. Watts, 159 Miss. 307, 131 So. 804;
> Illinois Central R. Co. v. Ramsay, 157 Miss.
> 83, 127 So. 725; 25 C. J. page 551, Section 59;
> Southers R. Co. v. Hall, 209 Ala. 237, 96 So. 73;
> Virginia Electric &Power Co. v. Wynne, 149 Va.
> 882, 141 S. E. 829; Stewart v. Sonneborn, 96
> U. S. 187, 25 L. Ed. 116; Taggart v. Peterson,
> 182 Miss. 82, 181 So. 137."

"From what we have said, it is patent that the court erred in refusing, under proper instructions, to submit to the jury the question of punitive damages, that is: Did Billingsley in and about the arrest and imprisonment of plaintiffs act with such disregard of the rights of the plaintiff as wanton or willful misconduct? This is a jury question under the facts of this case. It is also relevant to prove the financial worth of defendants. Whitfield v. Westbrook, 40 Miss. 311, 320; Wagner v. Gibbs, 80 Miss. 53, 63, 31 So. 434, 92 Am. St. Rep. 598."

Respectfully submitted,

Carl Rachlin

Harry Leonard Rosenthal

Attorney for Plaintiffs

By: HARRY LEONARD ROSENTHAL

United States Court of Appeals
FOR THE FIFTH CIRCUIT

October Term, 1964

No. 21325

D. C. Docket No. 3315-Civil Action

ROBERT L. PIERSON, ET AL.,

Appellants,

versus

J. L. RAY, ET AL.,

Appellees

Appeal from the United States District Court for the **Southern District of Mississippi.**

Before **JONES and BELL, Circuit Judges, and HUNTER, District Judge.**

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the **Southern District of Mississippi, and was argued by counsel;**

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, **reversed; and that this cause be, and it is hereby remanded to the said District Court so that the complaint and the action may be dismissed as to the appellee Spencer, and a new trial had as to the other appellees in accordance with the opinion of this Court;**

It is further ordered and adjudged that the appellees, Ray, Griffith and Nichols, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

October 25, 1965

Court Costs:

Docketing cause, etc.,...$25.00

Issued as Mandate: NOV 16 1965

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21325

ROBERT L. PIERSON, ET AL.,
Appellants,

versus

J. L. RAY, ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

(October 25, 1965.)

Before JONES and BELL, Circuit Judges, and HUNTER, District Judge.

JONES, Circuit Judge: The appellants brought an action against the appellees alleging a common-law tort claim for false imprisonment and a statutory[1] claim for damages for a deprivation of civil rights. The appellants were clergymen. One of them is a Negro. The appellees Ray, Griffith and Nichols were police officers of the City of Jackson, Mississippi. The appellee Spencer was the Police Justice and Ex-Officio Justice of the Peace, Hinds County, Mississippi.

---

[1] Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C.A. § 1983.

Fifteen clergymen in clerical attire, including the appellants, were participants in a so-called prayer pilgrimage. Most of the twenty-six who were accepted for the pilgrimage resided in Northern states. The pilgrimage was to start at New Orleans and go on to Dearborn, Michigan. A bus was chartered from New Orleans to Jackson, but not beyond. At Jackson the fifteen clergymen went by taxicab to the Continental Bus Terminal. They had bus tickets for transportation to Chattanooga, Tennessee. They arrived at the bus terminal in Jackson about 11:20 o'clock in the forenoon of September 13, 1961. The Chattanooga bus was scheduled to depart shortly after noon.

The prayer pilgrimage had been well publicized in advance. The appellees Griffith and Nichols had been sent to the bus station. Upon or soon after their arrival the fifteen clergymen started toward the coffee shop. They were stopped by the two officers and remained in the passageway leading to the coffee shop. The officers directed or ordered them to "move on." The clergy stayed at the place where they were halted. One of the officers telephoned the police station and soon after the appellee Ray arrived. He was then a captain of police. At the time of the trial of the cause in the district court he was deputy chief of police. When the group arrived there were fifteen to twenty people in the bus station. Twenty-five to thirty people, all of whom were white, followed them in. There was testimony that the people in the station were "mumbling in a very ugly mood," that they were "disturbed," that they were "in a turmoil," and that quite a disturbance was caused. The group of prayer pilgrims were completely orderly. Captain Ray told the clergy to "move along" and upon their failure and refusal to do so, they were arrested and taken to jail. An affidavit was filed by Captain Ray charging them with disorderly conduct under a Mississippi statute.[2] The appellants were tried on September 15, 1961, before the appellee, Judge Spencer, and found guilty. Each of the appellants was sentenced to four months in jail and fined two hundred dollars. Appellants Breeden, Morris, and Pierson were released on bond on September 19, and the appellant Jones was released on bond on September 29, 1965. Bond was available to all of the appellants and it was by their choice that they remained in jail rather than being sooner released on bond. The appellants took an appeal to the

---

[2] 1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:
(1) crowds or congregates with others in . . . . any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, ... or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, ... shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; . . . . Miss. Code 1942 Recompiled § 2087.5.

County Court of the First Judicial Court of Hinds County, where the appeal was by way of a de novo trial. The case of the appellant Jones was first heard by the County Judge, who found him not guilty. The prosecution then moved that the charges against the other appellants be nolle prosequied, and the motion was granted. The appellants brought this action, each claiming $11,001 damages. The cause was tried before a jury which returned a verdict for the appellees. A judgment was entered on the verdict from which this appeal has been taken.

In a pre-trial deposition of the appellee Spencer, he was asked whether a citizen has a right to disobey an unreasonable or improper order of a police officer, as in a case in which it was clear that the order of the policeman to move on was improper. He was asked to answer the question as a judge. His answer was that he thought the citizen should obey the officer and later seek redress. The appellants were not permitted to question the appellee Spencer as to this opinion when he was called as an adverse witness at the trial. The appellants contend that the ruling was erroneous. The refusal of the district court to permit the question was not error. Both at the taking of the deposition and at the trial the questions were propounded to the witness in his capacity as a judge. Whether or not a judicial opinion is erroneous is not a question to be resolved by a jury. A judge's function is to decide cases, but not to answer academic or hypothetical questions.

The appellee Spencer filed a motion to dismiss the complaint as to him on the ground that his actions were judicial and he was immune from any civil liability. The motion was deferred for decision until the trial of the case on the merits. No ruling on the motion was made. The judgment for the appellants made the question unimportant, but we think it is appropriate to say that the motion should have been granted. By the leading case of *Bradley v. Fisher,* 13 Wall. 335, 20 L. Ed. 646, the immunity was established of judges of courts of superior or general jurisdiction from liability for damages growing out of the performance of their judicial duties. The doctrine has been extended to the judges of all courts. *Barr v. Matteo,* 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434; *Yaselli v. Goff,* 2nd Cir. 1926, 12 F.2d 396, aff. 275 U.S. 503, 48 S. Ct. 155, 72 L. Ed. 395. The rule applies to city magistrates and municipal judges. *Cuiksa v. City of Mansfield,* 6th Cir. 1957, 250 F. 2d 700, cert. den. 356 U.S. 937, 78 S. Ct. 779, 2 L. Ed. 2d 813; *Reilly v. United States Fidelity & Guaranty Co.,* 9th Cir. 1926, 15 F. 2d 314; 35 C.J.S. 707, False Imprisonment § 44. Such is the law in Mississippi. *Bell v. McKinney,* 63 Miss. 187. The judicial immunity applies in civil rights actions as well as at common law. *Norton v. McShane,* 5th Cir. 1964, 332 F.2d 855, cert. den. 380 U.S. 981, ... S. Ct. ...., 14 L. Ed. 2d 274. If a judicial officer acts in the clear absence of all jurisdiction and authority he incurs liability for a false imprisonment caused by him. 35 C.J.S. 707, False Imprisonment § 44. The Mississippi statute, Sec. 2087.5, on its face, was sufficient to justify the action taken by Judge Spencer. The statute had not then been held invalid. It was subsequently upheld by the Supreme Court of Mississippi in *Thomas v. State,* 160 So. 2d 657, *Farmer v. State,* 161 So. 2d 159, and *Knight v. State,* 161 So. 2d

521. We think it cannot be said that there was a clear absence of jurisdiction in the appellee Spencer at the time action was taken by him although, since this cause was argued before us, the statute was held invalid as applied to circumstances such as those in this case. *Thomas v. Mississippi,* 380 U.S. 524, 85 S. Ct. 1327, 14 L. Ed. 2d 265. See *Boynton v. Virginia,* 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed. 2d 206. A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess. We think it was proper to defer a ruling on the motion of the appellant Spencer but it should have been granted when the evidence was in.

The doctrine of immunity which has long prevailed with respect to judicial officers, has been extended to other officers of government whose duties are related to the judicial process. *Barr v. Matteo,* 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434, *Norton v. McShane,* 5th Cir. 1964, 332 F.2d 855, cert. den. 380 U.S. 981, ... S. Ct. ...., 14 L. Ed. 2d 274;[3] *Gregoire v. Biddle,* 2nd Cir. 1949, 177 F.2d 579, cert. den. 339 U.S. 949, 70 S. Ct. 803, 94 L. Ed. 1363. In this cause, as in *Norton v. McShane, supra,* the doctrine of official immunity protects the police officers from common-law false-imprisonment liability. The rule may be otherwise where a claim is asserted under a Civil Rights Act. In *Norton v. McShane,*[4] *supra,* it was said:

> "While it is clear that the common-law immunity afforded legislative and judicial officers

---

[3] In Norton v. McShane a claim was asserted against Federal marshals. For Erie-Tompkins purposes it was a Mississippi case.

[4] It may be noted that Norton v. McShane was decided more than a year after Nesmith v. Alford. The writer of the Norton opinion was one of the judges of the panel that decided Nesmith.

> applies in suits under the Civil Rights Acts, there remains much uncertainty as to the extent to which immunity for subordinate executive officials applies, if it applies at all." 332 F.2d 855, 860-861.

The uncertainty then existing still prevails. 15 Am. Jur. 2d 452 et seq., Civil Rights § 67. It might seem to be an anomaly of the law that in the case of a Federal police officer acting in Mississippi, an extremely aggravated wrong must remain unredressed because of public policy, as was held in *Norton v. McShane, supra*; while in the case before us, municipal police officers, acting in Mississippi, may be required to answer in damages for acting in good faith under a state statute which they were entitled to presume to be valid. Yet such appears to be the law which controls our decision on this issue in this appeal.

By dictum in *Hoffman v. Halden*, 9th Cir. 1959, 268 F.2d 280, it was indicated that by the Civil Rights Act liability was imposed on state officers for acts within as well as without the scope of their authority if done under color of law. In *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L. Ed. 2d 492, it was held that under 42 U.S.C.A. § 1983 a cause of action may be asserted against a state police officer acting under color of state law for deprivation of a Fourteenth Amendment Constitutional right whether or not done wilfully. See *Cohen v. Norris*, 9th Cir. 1962, 300 F.2d 24. *Cf. Davis v. Turner*, 5th Cir. 1952, 197 F.2d 847. Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses. *Monroe v. Pape* did not expressly rule upon the question of immunity but the result necessarily implies rejection of such a defense as a general proposition. *Cohen v. Norris, supra.* The defense of immunity is not available to the police officer appellees in this cause.

While one of the appellants was on the stand as a witness for himself and the other appellants, he was shown a copy of the Daily Worker, setting out nine demands of the Communist party with respect to racial discrimination, and asked if he agreed with the demands. The witness was required to answer over objection. His answer was, as to all but one, that he agreed and as to it he was undecided. The appellants then moved for a mistrial. The motion was denied. The interrogation of the witness as to his beliefs regarding racial segregation and the like seem wholly irrelevant to any of the issues of the case. It might be urged with plausibility that the error in permitting the questions to be asked and requiring them to be answered was not prejudicial. We cannot agree. The permitting of the use of the Communist party organ, the Daily Worker, as the source of the inquiries could not be other than prejudicial error.

The trial court permitted one of the appellants and their witnesses to be questioned regarding racial strife in the City of Jackson occurring in connection with the visitation of Freedom Riders, so called, some time prior to the episode from which this action arose. Appropriate objections were made and overruled. No connection was shown between the Freedom Riders and the Prayer Pilgrims, and the appellants denied any connection. It was not shown that the earlier incidents were sufficiently close in point of time to have any relation to the situation with which we are dealing. It was error not to have sustained the objections.

The appellants here complain of a charge[5] given by the district court with respect to the Mississippi statute. No specific objection was made to the charge nor grounds of objection assigned.[6] It may be observed, in connection with the instruction, that at the time of the trial the

---

[5] The law of Mississippi is this—and I instruct you that Section 2087.5 of the Mississippi Code of 1942 Recompiled and as amended provides that whoever congregates with others in a public place or in any place of business engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby and who fail or refuse to disburse and move on when ordered so to do by any law enforcement officer of any municipality shall be guilty of a misdemeanor; and if you believe from the preponderance of the evidence in this case that on September 13, 1961, the plaintiffs congregated with others at the Trailways bus station in Jackson, Mississippi, under such circumstances that a breach of the peace may have been occasioned thereby, and that the plaintiffs failed or refused to disburse or to move on when ordered so to do by the police officers of the City of Jackson, Mississippi, then it would be your duty to return a verdict for the defendants in the case.

That is, you might say, the crux of the law, but, of course, everything I say to you is a part of the law, and all of the instructions will be taken together; but if a bunch of folks congregate with others engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby, and fail or refuse to disburse when ordered so to do by a law enforcement officer, he is guilty of a misdemeanor, and the officers under those circumstances would have the right to arrest him.

It is not contemplated by that law that any violence would be done to any particular person, but if a bunch of people gather at a public place under such circumstances as then existed that a breach of the peace may occur unless the officers have a right to tell them to move on, and if they refuse to do so, then, of course, they would be guilty of the crime, and the officers would have the right to arrest them.

[6] A general objection, which counsel attempted to interpose because of his fear that his memory had failed him, is unavailing. Fed. Rules Civ. Proc. 51, 28 U.S.C.A.

Mississippi statute, Section 2087.5, had not been held invalid. The instruction, in the form given, would not now be proper.

The appellants complain of the trial court's instruction[7] on probable cause, and an objection to it was made and preserved. If the trial court had been correct in its assumption that Section 2087.5 was a valid statute defining a misdemeanor, then the instruction would have been proper. A police officer is permitted to arrest, without a warrant, for misdemeanors committed in his presence. Is he to be required in order to be free from liability for damages, to have his action vindicated by a judgment of conviction, an affirmance on appeal, and a Supreme Court determination of the validity of the statute under which he has acted? The authorities are not uniform as to whether a public officer can be held civilly liable for acting under the authority of a statute subsequently held invalid. *Miller v. Stinnett*, 10th Cir. 1958, 257 F.2d 910. The rule followed in Mississippi, which may be the minority rule but which is controlling here, is that a public officer is not charged with the duty of determining at his peril whether a statute is valid when he is acting under it. *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 206. Thus the challenged instruction was not improper when given although if it should be requested now, since the statute has been declared invalid, it would be couched in different terms; although the conduct of the appellees would be tested by the situation existing at the time of their action.

---

[7] I further instruct you that if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Griffith and Nichols said defendants had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested, it is your duty to return a verdict for the defendants.

The appellant Morris was the executive director of the society which organized and supervised the prayer pilgrimage. The court admitted in evidence, over timely objections, his letters and memoranda used in organizing and planning the pilgrimage. From these exhibits and from the testimony of the appellant Morris it could have been inferred that one of the purposes, perhaps the prime purpose, of the pilgrimage was to have at least ten of the group jailed in Jackson. The length of time for remaining in jail was discussed. Arrangements in advance for bail bonds and for counsel had been made, or so it could have been found. In one of the communications it was said:

> "All in all, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for us when he said, 'About jail—Here I am, send me. I'm not brave but I'm obedient.'"

The evidence would have permitted a finding, not only that being jailed in Jackson was a possibility, but that the participants would go to Jackson for the purpose of procuring their jailing and would so conduct themselves as to insure the achievement of that result. We do not say that this evidence required such a finding; we say that it permitted it. If the appellants' claims can be defeated by a showing of a plan and purpose of being arrested and jailed, then the evidence was properly admitted. We think that such a showing would preclude recovery and the question is presented by the appellants' specification of error next considered.

The remaining assignment of error is the denial by the trial court of the appellants' motion for a directed verdict on the issue of liability, leaving only the question of damages to the jury. In urging this point, the appellants rely upon *Nesmith v. Alford*, 5th Cir. 1963, 318 F.2d 110, cert. den. 375 U.S. 975, 84 S.Ct. 489, 11 L. Ed. 2d 420. In *Nesmith* the plaintiffs had been arrested and placed in jail. They sued police officers for malicious persecution, false imprisonment, and deprivation of civil rights. This court held that the plaintiffs, Nesmith and his wife, were entitled to a directed verdict as a matter of law as to liability on the common-law claim for false imprisonment and, as we read the court's opinion, on the civil rights claim. The false-imprisonment common-law claim is a state cause of action. The *Nesmith* case was decided under the law of Alabama. This case arises under the law of Mississippi. It is our considered view that under the law of Mississippi the appellants were not entitled to a directed verdict of liability on the false-imprisonment claim. As we have pointed out, there was evidence from which it might have been found that the appellants went to Jackson, not only contemplating the possibility of being jailed, but with a design and plan that they should be. If they had such a design and plan, are they entitled to recover damages for having accomplished their objective?

The question is not whether the appellants could lawfully dramatize their protests against racial inequality by attempting to eat in a wrongfully segregated lunch room in a bus terminal of an interstate passenger carrier. It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program a planned arrest and confinement and then successfully rely upon such confinement as the basis for recovery in an action for damages for false imprisonment. Throughout the common law of torts the maxim, volenti non fit injuria, is applicable. It is applicable to false imprisonment. 35 C.J.S. 712, False Imprisonment § 46 c. One who has invited or consented to arrest and imprisonment should be denied recovery. *Hulberstadt v. Nelson,* 34 Misc. 2d 472, 226 N.Y.S. 2d 100; *Greene v. Fankhauser,* 137 App. Div. 124, 121 N.Y.S. 1004; *Stork v. Evert,* 47 Ohio App. 256, 191 N.E. 794. The principles set forth in the recent case of *State v. Moore,* .... Miss. ...., 174 So. 2d 352, show a recognition of the rule as applicable in Mississippi, although under a factual situation different from the case before us. An earlier decision, and one more nearly in point on its facts, is *Williamson v. Wilcox,* 63 Miss. 335, where it was said, "For a purely private injury one cannot maintain a suit when he has consented to the act which produced the injury." Whatever the law may be in some jurisdictions,[8] we conclude that, under the law of Mississippi, to which we look for the governing common-law rules of law,[9] proof that the plaintiffs invited or consented to arrest and confinement precludes recovery for false imprisonment. Since, as is said in *Monroe v. Pape, supra,* "Section 1979 [42 U.S.C.A. § 1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." We think the tort principle of volenti non fit injuria applies to the claim asserted for a civil rights violation under 42 U.S.C.A. § 1983 as well as to the common-law cause of action. For reasons elsewhere discussed in this opinion, we hold that the appellees are immune from liability for false imprisonment at common law but not from liability for violations of the Federal statutes on civil rights. It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment.

---

[8] As in Alabama. See Nesmith v. Alford, 5th Cir. 1963, 318 F.2d 110.

[9] Questions as to liability under Civil Rights Acts are Federal questions to be determined by Federal Law. Nesmith v. Alford, supra, n. 8; 15 Am. Jur. 2d 453, Civil Rights § 67.

The judgment of the district court will be reversed and remanded so that the complaint and the action may be dismissed as to the appellee Spencer, and a new trial had as to the other appellees in accordance with this opinion.

REVERSED AND REMANDED.

Adm. Office. U. S. Courts—E. S. Upton Printing Co., N. O., La.

IN THE

United States Court of Appeals

For the Fifth Circuit

No. 21,325

ROBERT L. PIERSON, *et al.*,
Appellants,

vs.

J. L. RAY, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

REPLY BRIEF AND APPENDIX FOR PLAINTIFFS-APPELLANTS

CARL RACHLIN,
38 Park Row,
New York, New York,

LEONARD H. ROSENTHAL,
221 North President Street,
Jackson, Mississippi,
Attorneys for Appellants.

INDEX

SUBJECT INDEX

PAGE

Reply Brief of Plaintiffs-Appellants ____ 1

Introduction ____ 1

Summary of Argument of Plaintiffs-Appellants __ 2

Argument ____ 3

Introduction ____ 3

Point I—Probable Cause ____ 5

1. Probable Cause Is Not A Defense To This Action ____ 5
2. Were Probable Cause A Defense, The Facts Before Us Conclusively Preclude Its Availability To Defendants-Appellees ____ 5

Point II—Our Second Cause Of Action Lies Within Title 28 U. S. C. A. §1983 And For All The Reasons Set Forth In The Facts Above Stated A Directed Verdict Should Have Been Granted. See Monroe v. Pape, 365 U. S. 167 ____ 12

Point III—The Record Is Replete With The Errors Of The Court Below ____ 13

Conclusion ____ 18

Certificate ____ 19

Appendix ____ 1a

TABLE OF CASES

PAGE

Edwards v. South Carolina, 372 U. S. 229 14

Farmer v. State, 161 So. 2d 159 12

Forsythe v. Ivey, 139 So. 615 10

Gay v. Heller, 258 F. 2d 313 .... 1a

Harris v. Sims, 124 So. 325 10

Hewellette v. George, 9 So. 885, 68 Miss. 703 .... 13, 14

Howell v. Viener, 176 So. 731 9

King v. Weaver Pants Corporation, 127 So. 718 8

Knight v. State, 161 So. 2d 521 12

Lenaz v. Conway, 105 So. 2d 762 9

McShane v. Moldovan, 172 F. 2d 1016 .... 1a

Monroe v. Pape, 365 U. S. 167 12

Nesmith v. Alford, 318 F. 2d 110, cert. den. 375 U. S. 975 12

Pickett v. State, 104 So. 358, 139 Miss. 529 15

Picking v. Pennsylvania Railroad Co., 151 F. 2d 240 .... 1a

State v. Bloom, 58 So. 2d 32 10

Taylor v. Louisiana, 370 U. S. 154 12

Thomas v. State, 160 So. 2d 659 12

Via v. Holly, 41 So. 7 11

Yates v. Village of Hoffman Estates, 209 F. Supp. 757 1a

OTHER AUTHORITIES

PAGE

Congressional Globe (39th Congress):
- January 29, 1866 .... 1a
- February 2, 1866 .... 1a
- February 3, 1866 .... 2a
- March 1, 1866 .... 3a
- April 14, 1866 .... 3a

42 U. S. C. A. §1983 .... 1, 2, 5, 12, 13, 16, 17

Mississippi Code Revised 1942,
- §2474 9
- §2087.5 16

American Jurisprudence (False Imprisonment),
- p. 355 6
- §28 .... 7, 11

Corpus Juris Secundum (False Imprisonment)
- p. 624 6

Prosser, Law of Torts (False Imprisonment),
- p. 61 .... 7, 9

TABLE OF CASES

PAGE

Edwards v. South Carolina, 372 U. S. 229 14

Farmer v. State, 161 So. 2d 159 12
Forsythe v. Ivey, 139 So. 615 10

Gay v. Heller, 258 F. 2d 313 .... 1a

Harris v. Sims, 124 So. 325 10
Hewellette v. George, 9 So. 885, 68 Miss. 703 .... 13, 14
Howell v. Viener, 176 So. 731 9

King v. Weaver Pants Corporation, 127 So. 718 8
Knight v. State, 161 So. 2d 521 12

Lenaz v. Conway, 105 So. 2d 762 9

McShane v. Moldovan, 172 F. 2d 1016 .... 1a
Monroe v. Pape, 365 U. S. 167 12

Nesmith v. Alford, 318 F. 2d 110, cert. den. 375 U. S. 975 12

Pickett v. State, 104 So. 358, 139 Miss. 529 15
Picking v. Pennsylvania Railroad Co., 151 F. 2d 240 .... 1a

State v. Bloom, 58 So. 2d 32 10

Taylor v. Louisiana, 370 U. S. 154 12
Thomas v. State, 160 So. 2d 659 12

Via v. Holly, 41 So. 7 11

Yates v. Village of Hoffman Estates, 209 F. Supp. 757 1a

OTHER AUTHORITIES

PAGE

Congressional Globe (39th Congress):

January 29, 1866 ... 1a

February 2, 1866 ... 1a

February 3, 1866 ... 2a

March 1, 1866 ... 3a

April 14, 1866 ... 3a

42 U. S. C. A. §1983 ... 1, 2, 5, 12, 13, 16, 17

Mississippi Code Revised 1942,

§2474 ... 9

§2087.5 ... 16

American Jurisprudence (False Imprisonment),

p. 355 ... 6

§28 ... 7, 11

Corpus Juris Secundum (False Imprisonment)

p. 624 ... 6

Prosser, Law of Torts (False Imprisonment),

p. 61 ... 7, 9

IN THE

United States Court of Appeals

For the Fifth Circuit

No. 21,325

Robert L. Pierson, *et al.*,
Appellants,

vs.

J. L. Ray, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

Introduction

Defendants-Appellees' Brief resolves itself into three main points:

A. That the police Defendants-Appellants had probable cause for their actions and that probable cause is a valid defense in Mississippi to an action for false arrest.

B. That Plaintiffs-Appellants had no valid cause of action under 42 U. S. C. A. §1983 because they were not denied Due Process of Law.

C. That Judge Mize made no reversible errors of law at the trial.

Summary of Argument of Plaintiffs-Appellants

I. (1) Probable cause is not a defense to an action for false arrest or imprisonment.

(2) In any event, the facts, as a matter of law, show no probable cause, or for that matter a rational legal basis, for these arrests.

II. Plaintiffs-Appellants were engaged in legal conduct and their arrest by the Police and conviction by Judge Spencer was all part of a lack of due process and a violation of Title 42 U. S. C. A. §1983.

III. That the record below is replete with errors whereby Judge Mize

(a) admitted irrelevant prejudicial testimony;

(b) refused to direct a verdict for Plaintiffs-Appellants as requested;

(c) improperly permitted, over objection, at the last minute, an amendment to the answer concerning probable cause;

(d) prevented Plaintiffs-Appellants from showing that Judge Spencer was part of the conspiracy to arrest and convict Plaintiffs-Appellants falsely;

(e) improperly gave the law to the jury.

ARGUMENT

Introduction

One reading the lengthy brief of our brothers would never learn that the police Defendants-Appellees testified that Plaintiffs-Appellants did nothing of a disorderly nature; it was the presence of others (doubtfully) who threatened possible disturbance (R. 495). The lack of good faith of the police officers is shown by

(i) the fact that none of the officers asked any others in the station to leave.

(ii) Although claimed by the police, not one statement supposedly hostile to Plaintiffs-Appellants was shown coming from anyone in the station, nor was there a single hostile act. In fact, the testimony of Father Zimmer indicated quiet existed at the time (R. 495-6, 498-9).

(iii) Although the two police officers, other than defendant Ray, were disturbed (supposedly) by the hostile audience in the station, one of them nevertheless was not so seriously disturbed as to be unable to leave the scene to call for the famous Captain, now Chief, Ray, the arresting officer of all or almost all persons arrested for harmless conduct in the Jackson Continental Trialways Bus Station, often referred to as Freedom Riders; nor was Officer Nichols so disturbed as to tell the Chief of Police that an ugly mob was in the station (R. 490).

(iv) *Mirabulu dictu* when Captain Ray was called on the phone to be advised that the villainous Episcopal Priests were in custody, officer Nichols was told the Captain was already on his way. (We must confess we wonder how the Captain knew where to go, yet nevertheless almost immediately dashed in the back way to the station, and without anything so much as a word to anyone, immediately knew his duty (R. 500)). Without a question to the other defendants, Plaintiffs-Appellants were arrested for the second time.

Since they were already in custody and therefore even more quiet than the moment they were originally arrested, nothing they were doing could lead anyone to think they had committed a crime. Yet Ray, with remarkable prescience, knew precisely what was wrong, and arrested the evil Priests of the Episcopal Church.

(v) That at the time of these arrests a sign existed immediately outside the door of the waiting-room of the Bus Station saying "White only, By Order of the Police."

(vi) These Priests were both white and Negro. It was therefore the duty of Defendants-Appellees to arrest Plaintiffs-Appellants regardless of whether they committed any wrongful act; and as the testimony shows, there was no wrongful act except their presence in the Station; and, in fact, the officer did not know of an occasion when a Negro had gone to that part (white only) of the station and had not been arrested (R. 500).

I.

Probable Cause.

1. Probable Cause Is Not A Defense To This Action.

A. The essential defense of the Defendants-Appellees rests upon "probable cause" for the arrests of Plaintiffs-Appellees. Although this defense was not inserted until immediately prior to the trial, and since unquestionably the arrests were made, and since the complaint against Plaintiffs-Appellants Jones and Breden were dismissed and the others *nol prossed* (R. 113-120; 474-82; 387-96; 235-45), the defense below had to rely upon a theory which could ignore the obvious facts of no justification for these arrests; and on the other hand would permit the defense to get to the jury so that it could find probable cause for the arrest.

In our view the error of Judge Mize was threefold in this regard; in permitting the amendment to the answer, since probable cause is not a defense to false imprisonment; charging the jury that it could find for Defendants-Appellants if it found there was probable cause for the arrest; and refusing to direct a verdict for the Plaintiffs-Appellants because all of the elements of both the common-law tort and 42 U. S. C. A. §1983 were proven and not contradicted, and the Defendants-Appellees had no legally sufficient justification, and showed no facts were probable cause available as a defense.

B. One of the common misunderstandings in the law concerns the difference between false imprisonment and false arrest on the one hand, and malicious prosecution on the other. This difference can best be understood when we consider that false arrest and false imprisonment, at common law, sounded in Trespass, i.e. a direct injury to the persons of the injured, whereas Malicious Prosecution was an action that had to be brought in Trespass on the Case, an indirect or negligent injury.

How are false imprisonment and false arrest direct injuries, and thus required to be brought in Trespass? In each case the action is against the person who falsely arrested or falsely imprisoned the plaintiff.

"A false arrest is one means of committing a false imprisonment, but a false imprisonment may be committed without an arrest, and a distinction has been drawn between the two in that a false arrest must be committed under the assumption of legal authority." *Corpus Juris Secundum,* p. 624 (False Imprisonment).

But malicious prosecution is an action against the person who may have instigated the imprisonment, but did not in fact make the false arrest or false imprisonment. Thus malicious prosecution is normally brought against the private citizen who has gone to the police and caused the police to make the arrest.

And so "In the case of malicious prosecution, as in abuse of process, valid process justifies the restraint or imprisonment, and the gist of the cause of action is malice or evil interest . . . and the common law action to be used is trespass on the case." *American Jurisprudence,* p. 355 (False Imprisonment).

And at page 354 we read, "Both Courts and text writers have sometimes confused these causes of action and thereby fallen into error in their statement of the law . . ." See also *Corpus Juris,* p. 624 *et seq.* (False Imprisonment).

C. When we consider the nature of the defenses available, we see the importance of the differences on this appeal between False Imprisonment and Malicious Prosecution.

A substantial part of the brief of Defendants-Appellees is devoted to "probable cause" as an alleged defense to our action for false arrest. As we hope to illustrate, this entire section of their brief points up the confusion referred to above.

"According to the great weight of authority, the want of probable cause is not an essential of the action for false imprisonment, *and the presence of probable cause for the imprisonment is not generally a defense to the action* (emphasis supplied). *American Jurisprudence* (False Imprisonment, §28).

Not only is probable cause no defense to this action, but malice or good faith, or the lack of them, by the defendant is irrelevant.

"There may be liability although the defendant believed in good faith that the arrest was justified . . . *Nor is probable cause a defense* . . . once the fact of imprisonment is established." Prosser, *Law of Torts,* p. 61 (False Imprisonment). Significantly, the next sentence says, "The burden is upon the defendant to show *legal justification.*" (Emphases supplied).

Clearly "legal justification" is a more severe test than "probable cause;" the defendant must justify his arrest of plaintiff, i.e. he must prove he was right, not, as in probable cause, merely show he thought he was right, and acted without malice.

D. Relying on this sometime looseness of language, Defendants-Appellees cite several Mississippi cases which allegedly show that Mississippi permits a defense of probable cause to an action for false imprisonment. None of the Mississippi cases cited in fact stand for this proposition. On the contrary, these very cases, despite some inarticulate confusion, illustrate the statement of the law we have expressed above.

Let us therefore examine the cases cited by Defendants-Appellees.

King v. *Weaver Pants Corporation,* 127 So. 718 (p. 13 of Defendants-Appellees' brief). This was not an action for false imprisonment but malicious prosecution. For having gone to the police and procured the arrest of plaintiff, plaintiff brought this action against the corporation, not against the policeman who arrested her. This is typical of the malicious prosecution set of facts.*

In its opinion in this case the Mississippi Supreme Court shows that it, even though Defendants-Appellees do not, knows the difference between false imprisonment and malicious prosecution.

"The appellant contends that it is not necessary to prove either malice or want of probable cause to sustain the cause of action here." (In other words, appellant there was trying to make the case sound in false imprisonment or trespass).

The Supreme Court of Mississippi then goes on to say, "This court has decided that in a suit for *malicious prosecution* (emphasis supplied) it is necessary for the plaintiff, in order to recover, to allege and prove both malice and want of probable cause."

Spelling out the distinction further, the court adds, "If the proceeding was for *false imprisonment,* it cannot likewise be sustained, because it is a complete defense to an action for false imprisonment that the arrest or detention was by virtue of process legally sufficient in form and duly issued by a court or official having jurisdiction to issue . . ." (emphasis supplied).

If we may interpolate, as was not the fact in this appeal, in the *Weaver Pants* case the police officer, not a defendant in that case* and thus the discussion is *dicta,* albeit important, had a complete defense because he was acting pursuant to process of the court and was not chargeable for any error. In order to bring an action for false imprisonment, she had to have sued the officer. She could not have sustained an action against the police officer who actually made the arrest because he merely carried out the process of the court. In this appeal before us the contrary is true. The police officers acted upon their own initiative and not merely pursuant to court process, and arrested these Plaintiffs-Appellants, and thus must satisfy the higher test as stated in Prosser, *Law of Torts, supra,* of justifying this admittedly illegal conduct.*

---

* Of course, she could not sustain an action against the police; the officers acted pursuant to a valid process of the court; this is a defense under probable cause.

Similarly, in *Howell* v. *Viener,* 176 So. 731, again the action was for malicious prosecution, not false imprisonment, though loose language refers to false imprisonment. The *Howell* case is a suit against a private citizen who complained to the police, not against anyone who actually arrested or imprisoned the plaintiff. And so by the historic test probable cause was an issue.

Examining *Lenaz* v. *Conway,* 105 So. 2d 762 (p. 14 of Defendants-Appellees' brief), we see the same misunderstanding. Once again the action is for malicious prosecution, not false imprisonment. In Defendants-Appellees' statement of the case (their brief p. 14) this is made precisely clear when they say themselves the case "was brought against a third party for having requested police officials to, and caused them to arrest appellant without a warrant . . ." In other words, we see the common misunderstanding referred to above.

---

* Understanding this difference between false imprisonment and malicious prosecution we see that the Mississippi Legislature passed §2474 of the Mississippi Code (cited by Defendants-Appellees on p. 11 of its brief), which sets forth the common law defense available to a police officer who merely carries out the process of the Court, and is not acting on his own initiative, as in the false arrest appeal before us.

Conversely, only two of the Misisssippi cases cited by Defendants-Appellees are actually false arrest or false imprisonment cases and nowhere in those do we see the term "probable cause." *State* v. *Bloom,* 58 So. 2d 32 (p. 14 of brief) and *Forsythe* v. *Ivey,* 139 So. 615 (p. 15 of brief). In the *Bloom* case the issue turned on whether plaintiff had committed the offense; the proof was that he had; he was drunk and therefore the police had *justification* for their act.

And in *Forsythe* v. *Ivey, supra,* the issue was the same with no reference to probable cause, the Court there saying, at p. 617, "In our opinion, the preponderance of the evidence warrants the belief that he was, in fact, drunk." In other words, the acts of the police were justified. If he were insane, rather than drunk, the police would have been similarly justified. The court reversed a verdict for the appellees in that case.

Thus, despite occasional lapses in language, the Mississippi courts know the difference between Malicious Prosecution and False Imprisonment. Not cited by Defendants-Appellees is the Missisippi case of *Harris* v. *Sims,* 124 So. 325, where the court showed it understood the difference between justification and probable cause. The former is a defense that must be pleaded affirmatively and, accordingly, the burden is on the police to *justify* their conduct in an action for false arrest.

Probable cause, or rather the lack of it, must be shown by the plaintiff, on the other hand, in order to succeed in an action for malicious prosecution.

Before us, without question, is an action for false arrest and imprisonment. Judge Mize, we urge, misunderstood the Mississippi law and, accordingly, improperly permitted an amended answer to plead probable cause, and improperly charged the jury, and improperly denied our motions in regard thereto.

Not entirely on all fours with the case before us, yet illustrating the fact that the Mississippi Court, despite loose language, understands the law as expressed above, we cite *Via* v. *Holly*, 41 So. 7. The facts showed no malice involved, yet the court said, "Any officer, in making an arrest, acts at his own peril in arresting the right person . . ." Were the law as stated by Defendants-Appellees, and if there were a defense of probable cause in this kind of case, no court would say a policeman acts at his own peril, but would give him the benefit of a reasonable error if probable cause for the arrest existed, and the court would use some such language appropriate thereto.

E. Deliberately desiring not to punish Defendants-Appellees, no claim was made by Plaintiffs-Appellants for exemplary or punitive damages in the complaint. Had we made such a claim, there might have been some merit to the argument of Defendants-Appellees concerning "probable cause." This may perhaps account for the general misunderstanding of the District Court below. "However, the question of probable cause becomes material when punitive damages are sought." *American Jurisprudence* (False Imprisonment, §28).

Not having sought punitive damages because it would not be seemly on the part of clergymen, they should not be treated as if the defense of probable cause was properly allowed.

2. Were Probable Cause A Defense, The Facts Before Us Conclusively Preclude Its Availability To Defendants-Appellees.

Without rearguing this point, suffice to say that the police officers herein did not act in good faith; they knew the clergymen did nothing to warrant the arrest (R. 496). Supporting this position, no evidence has been brought forth from other witnesses, such as employees of the bus station, and we have every right to assume and infer therefrom that they would not corroborate the police.

All the testimony points clearly to a predetermination to arrest because there were mixed white and Negro clergymen present in one group; and thus, as a fact, there can be no probable cause, even should that be a defense. The police sign outside the station shows this even more clearly.

It is true, as Defendants-Appellees state, that we place considerable reliance on *Nesmith* v. *Alford,* 318 F. 2d 110, cert. den. 375 U. S. 975; we believe that so far as the issues here are concerned, the same result is necessitated. The cases we consider relevant cited by the Defendants-Appellees in Point I of their brief we have discussed above; the others are of no interest or relevance. Thus we urge that there are no facts upon which a defense of probable cause, were it allowed, could be based, since there was no cause for the arrest based upon any conduct of Plaintiffs-Appellants.

II.

Our Second Cause Of Action Lies Within Title 42 U. S. C. A. §1983 And For All The Reasons Set Forth In The Facts Above Stated A Directed Verdict Should Have Been Granted. See *Monroe* v. *Pape,* 365 U. S. 167.

One would have to be naive beyond a reasonable degree to accept the explanation of the police as to their intentions herein. Clearly and simply they were determined not to permit a group of white and Negro clergymen to use the facilities of the bus station. In no essential way are the facts different from *Taylor* v. *Louisiana,* 370 U. S. 154. [Were a prediction permissible, *Taylor* is a foretelling of what will happen to the cases set forth in Defendants-Appellees' appendix in full, *Thomas* v. *State,* 160 So. 2d 659; *Farmer* v. *State,* 161 So. 2d 159 and *Knight* v. *State,* 161 So. 2d 521 in the United States Supreme Court, where they are now seeking *certiorari;* the facts and the statutes are sufficiently identical, and the decisions as wrong morally and legally, so as to warrant the same appropriate result.]

Not seeking punitive damages, nevertheless Plaintiffs-Appellants were actually damaged. No immorality, no wrongdoing can attach to their legal and moral right to be a Witness to the teachings of the Christian religion and to their right to report the result of their acts to the convention of the Episcopal Church.

The wrong lies in the conscious effort of the police to prevent their common association as brothers. To urge that we are all one; to show that superficial differences cannot be continued as a way of life; to demonstrate that integrity, character worthiness can only be found *under* the skin, these are the duty of Priests of the Episcopal Church. This is what the police and later Judge Spencer consciously prevented. While the ethics of religion, the brotherhood of man, the unity of all may not be specific clauses in our Constitution, the effort, as the uncontradicted facts show, to prevent these clergymen from practicing the brotherhood of man, is written into the Constitution; namely, we observe it in the First and Fourteenth Amendments, and it is further delineated in Title 42 U. S. C. A. §1983.

We had a right to a directed verdict on both counts, and a right to a charge that made clear the clergymen suffered substantial *actual* damage. See *Hewellette* v. *George,* 9 So. 885, 68 Miss. 703 as to our entitlement in damages.

III.

The Record Is Replete With The Errors Of The Court Below.

(a) So much prejudicial, irrelevant testimony was offered that only a reading of the record can spell this out sufficiently. We have, in our main brief, shown some of the most egregious errors. Permitting a retrial of the criminal trial, permitting a tarring of the clergymen with the Communist brush, attacking the clergymen at the several trials herein because of other work of their counsel, constant reference to "freedom riders," to Dr. Martin Luther King solely to inflame the jury, making personal attacks on Father Pierson because he was once a Methodist and converted to the Episcopal Church, apparently on the theory that this shows a looseness of character, all contributed to an atmosphere which prevented an approach to a fair trial.

(b) Motions for a directed verdict were properly made (R. 617-26) and denied. We urge that this was reversible error. All Plaintiffs-Appellants, on their appeal to the County Court from conviction and sentencing by Judge Spencer either had their complaints dismissed against them or the cases were *nol prossed* by the City Attorney. In no way could these arrests be justified. They were wrongful, and the police accordingly must act at their peril as stated above. A citizen has the right, even the duty, to refuse to obey an order so clearly wrong as this order of the police. *Edwards* v. *South Carolina,* 372 U. S. 229. It was illegal and should have been disobeyed. Not only did the police not act in good faith (e.g. they made no effort to speak to others in the station; Chief Ray charged in and immediately knew the Priests were guilty of a crime, etc.), but in any event, at the trial *de novo* of Jones in the County Court, based on the police testimony, there was not even sufficient evidence to hold Plaintiffs-Appellants. A motion to dismiss in the County Court was granted at the end of the State's case.

With this history there was no issue to submit to the jury on liability, and the directed verdict should have been granted. We have previously referred to the *Hewellette* case on the question of actual damages as the Mississippi law.

(c) Under Mississippi law a conspiracy may be shown by indirect evidence, circumstantial in nature.

"A conspiracy rarely can be shown by direct evidence. Oftentimes it can only be shown by many facts and circumstances taken and considered together, any one of which would be wholly insufficient to establish a conspiracy." *Pickett* v. *State,* 104 So. 358, 139 Miss. 529.

Judge Spencer may not like the term but he was part of a conspiracy which arrested, tried, convicted and jailed these Priests. We were not allowed to put in this testimony by Judge Mize.

From the testimony not admitted, Judge Spencer made clear that in his view as a judge a citizen had no right to refuse to obey an improper order of the police (R. 516). From the testimony not allowed in, the police knew how he would act, and that he would convict these Priests, as he had convicted numerous others in all bus station mixed group cases. And further, Judge Spencer openly acknowledged that, despite the reversal of his judgment on appeal of his decision, he would act in the same way again. This testimony was not admitted (R. 527-8), even though we believe it tends to show a determination on the part of Judge Spencer not to act as a judge, but as part of the conspiracy in a group to arrest and convict, sentence and jail.

As he sat in Judgment upon them, he had with him the Book of Common Prayer and, in giving his decision, read so much of the Canon Law that related to the duty of all men to obey the civil authorities (R. 532-3). This testimony was not admitted by Judge Mize, even though he acknowledged that he had said they were not guilty of violating that article (R. 539).

We tried to show that having the Book of Common Prayer in Court was unique and it could only be there to read that part referred to above which clearly shows his determination to find the Priests guilty regardless of their conduct (R. 534-36); we were not permitted to show this.

From all these facts, from his view of the law, his having ready that particular article of Canon Law, his relation to the previous Bus Station cases (the Freedom Rider cases), Chief Ray's connection with them, the fact that Ray made all or almost all the arrests, that Ray frequently testified on these cases before Judge Spencer, that each knew what the other would say and do and could rely on each other, all these, if we had been allowed to show them, would have satisfied the necessity of proof as to Judge Spencer's part in the conspiracy, and further, his part in a violation of Title 42 U. S. C. A. §1983. As indicated, judges can be held in violation of this section.*

A judge who testifies that a citizen does not have the right to refuse to obey an order of the police no matter how improper (R. 516) not only inaccurately states the law, but, more importantly, is one the police can rely upon when they make the kind of illegal arrests as were made here.

(d) The charge to jury, objected to by Plaintiffs, specifically and in general, improperly set forth the law herein:

(i) The jury was so charged that in essence they were deciding whether Plaintiffs-Appellants were guilty of breach of the peace under §2087.5 of the 1942 Mississippi Code (R. 628-9) despite the ruling of the County Court.

(ii) In his charge Judge Mize reminded the jury of the Freedom Rides even though they were months before this event and years before this trial and had nothing to do with this case, and then misstated the law (R. 630). The only reason for this was to enflame the jury against Plaintiffs-Appellants.

---

* See attached appendix.

(iii) Judge Mize properly granted our request for a charge as to probable cause (R. 632), but then completely nullified it immediately thereafter (R. 633) and then supported Defendants-Appellees' position on probable cause (R. 634).

(iv) Judge Mize improperly instructed the jury, authorizing it to find for the defendants even though Plaintiffs-Appellants' complaints were dismissed or *nol prossed* by the County Court.

(v) The instruction as to any claim under Title 42 U. S. C. A. §1983 was made so as not to give the jury instructions as to any circumstances whereby the jury could find for the Plaintiffs below; the instructions consisted of advice on how the jury could find for the Defendants below.

(vi) The entire charge was framed in these negative terms, not setting before the jury a possible Plaintiffs' verdict.

(vii) No reference was made in the charge to the testimony of various witnesses showing disagreement with the testimony of the police (R. 545-9 for example). The jury was not advised as to the considerations for evaluating testimony in any conflict of testimony.

Our exceptions to the charge are set forth in the Record (R. 638-40).

CONCLUSION

For all the reasons above stated we respectfully request that this Court reverse and set aside the order and judgment below and that a directed verdict for Plaintiffs-Appellants be ordered together with the costs of this appeal.

Respectfully submitted,

CARL RACHLIN,
38 Park Row,
New York, New York,

LEONARD H. ROSENTHAL,
221 North President Street,
Jackson, Mississippi,
Attorneys for Appellants.

Certificate

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, copies of the foregoing brief to Honorable Thomas H. Watkins and the Honorable E. W. Stennet, attorneys for Appellees, at their usual business addresses.

Dated at New York, New York, this 6th day of November, 1964.

CARL RACHLIN

APPENDIX

(see footnote p. 16)

In addition to the cases which have held a judge liable for certain illegal acts, or for liability under the Civil Rights Laws (see *Gay* v. *Heller,* 258 F. 2d 313; *McShane* v. *Moldovan,* 172 F. 2d 1016; *Picking* v. *Pennsylvania Railroad Co.,* 151 F. 2d 240; and *Yates* v. *Village of Hoffman Estates,* 209 F. Supp. 757), the following quotations from the Congressional *Globe* of 1866 (39th Congress) we think might be of interest to this Court:

January 29, 1866

DEBATE U. S. SENATE CIVIL RIGHTS BILL (S. 61)

Cowan, Edgar (Penna): ". . . next all *persons* who undertake to execute those laws are made criminals, and that includes the *judge* (emphasis supplied), the constable, the sheriff, the marshal, and everybody. That is my reading of it . . ."

Stewart, William M. (Nev.): "I will ask the Senator whether the fugitive slave law did not contain a precisely similar provision and if it was not held good by the Supreme Court of the United States?"

Cowan: . . . "law of 1850 . . ." (September 18, 1950)

Johnson, Reverdy (Md.): "The Supreme Court held it to be Constitutional."

February 2, 1866

Hendricks, Thomas A. (Ind.): ". . . some judges purpose . . . not to recognize civil equality . . ."

"some judge of a court . . ."

". . . and you make that judge not only responsible in the court but in the criminal courts of the U. S. for his adjudication. You make him a criminal . . ."

Lane, Henry S. (Ind.): "Why, then, the necessity of passing the law? Simply because we fear (for) the creation of this law if left to the State Courts. That is the necessity for this provision.

"Here is a justice of the peace in South Carolina or Georgia, or a county court, or a circuit court . . . Neither the judge, nor jury nor the officer as we believe is willing to execute the law."

February 3, 1866

DEBATE H. R. FREEDMEN'S BUREAU BILL (TO EXTEND)

Marshall, Samuels (Ill.): "And if any judge undertakes to punish him (black man for exercising civil right of white man) for attempting to exercise that civil right . . . liable to punish the judge by a fine of $1,000.00 and imprisonment for one year."

". . . arrest the judge of election . . ."

". . . punish the judge or other officer of the law who shall attempt to enforce the local law."

Moulton, Samuel W. (Ill.): ". . . the damnable violence of the leading men in the Southern states . . ."

Shanklin, George (Ky.): "According to the literal constructors of the provision of this bill you may inflict this punishment upon the judge of your state court . . ."

". . . the judge . . . is subject to the jurisdiction of the Freedmens Bureau and may be fined and imprisoned . . ."

March 1, 1866

DEBATE H. R. ON CIVIL RIGHTS BILL (S. 61)

Wilson, James F. (Iowa): "... Suffice it to say that they (remaining sections of civil rights bill) are based on the act of September 18, 1850, commonly known as the "fugitive slave law," the constitutionality of which has been affirmed over and over again by the courts (vide 5 Mo Leass, Rep., 469; 2 Paine, C. C. 348; 16 Barbour, 268; 7 Cushing, Mass 285) and, sir, I am not willing that all of these precedents, legislative and judicial, which aided slavery so long, shall now be brushed into oblivion when freedom needs their assistance."

Rogers, Andrew (N. J.): "... (this bill) is nothing but a relic of the Freedmans Bureau bill, which was vetoed by the President of the United States."

"Why, sir, let me state a case which may arise under the operations of this bill. Suppose that before a judge in the State of Delaware a Negro should offer himself as a witness. The judge is bound to decide that a Negro is not a competent witness, because the law of the State of Delaware has expressly excluded the Negro from giving testimony. Yet, if that judge should conscientiously believe this bill to be unconstitutional, and should, in accordance with the law of his State, decide that that Negro is not entitled to be a witness, he is liable, under this bill, to be prosecuted, and indicted as a criminal, and sentenced to be incarcerated . . ."

April 4, 1866

DEBATE U. S. SENATE CIVIL RIGHTS BILL (S. 61)
(TO RECONSIDER)

Trumbull, Lyman (Ill.): "Who is to be punished? Is the law to be punished? Are the men who make the law to be punished? Is that the language of the bill? Not at all. If *any* person, 'under color of any law' . . . he is to be punished. (emphasis supplied) Who? The person who, under color of the law, does the act, not the men who made the law . . ."

"But it is said under this provision judges of the courts and ministerial officers who are engaged in the execution of any such statutes may be punished; I admit that a ministerial officer or a *judge* . . . may be and ought to be punished . . . if he acted knowingly, viciously, or oppressively . . ., I repeat, he ought to be punished . . ." (emphasis supplied)

". . . I should like to know . . . if it is any worse to punish a judge who under color of law undertakes to deprive of his liberty a poor African freed from bondage by the Constitution of his country than it is to punish a judge who reimprisons a man . . ."

"Would the fact that the persons engaged in the conspiracy were judges or Governors or ministerial officers, acting under color of any statute or custom, screen them from punishment? Surely not."

". . . Sir, there is no novelty in these provisions, and the times require them."

"The assumption that State judges and other officials are not to be held responsible for violations of U. S. laws, when done under color of State Statutes or customs is akin to the maxim of English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which the rebellion was hatched."

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NUMBER 21325

ROBERT L. PIERSON, ET AL.	PLAINTIFFS
VS.	
J. L. RAY, ET AL.	DEFENDANTS

MOTION TO RECALL AND STAY MANDATE

Now comes the appellants, by their attorney of record, and moves the Court to enter an order recalling the mandate of this Court entered in this action on October 25, 1965 and when recalled to stay the said mandate pending appellants' application to the Supreme Court of the United States for Writ of Certiorari, and in support of their motion would show unto the Court the following; to-wit:

That appellants desires to request a Writ of Certiorari from the Supreme Court of the United States, and in furtherance of this desire did on January 16, 1966 file with the Supreme Court of the United States an Application for Extension of Time in which to File Petition for Writ of Certiorari, that the Supreme Court has granted an extension of time in which to file a Petition for Writ of Certiorari, and on January 28, 1966 the appellants requested the Clerk of this Court to certify the record to the Supreme Court of the United States.

Respectfully submitted,

L. H. Rosenthal
L. H. ROSENTHAL
Attorney for Appellants

CERTIFICATE

I hereby certify that a true copy of the foregoing motion has been forwarded by United States mail, postage prepaid, to Hon. Thomas H. Watkins, 800 Plaza Building, Jackson, Mississippi, Attorney of Record for the Appellees.

This the 2nd day of February, 1966.

L. H. Rosenthal

[enclosed, Reitman to Rachlin, 1966, October 17]

The American Civil Liberties Union and the ~~CORE~~ Scholarship, Education and Defense Fund for Racial Equality today urged the U.S. Supreme Court to rule that Jackson, Mississippi police officers and judges allegedly acting under state law can be held liable under the 1871 Civil Rights Act for depriving individuals of their constitutional rights.

The civil liberties-civil rights organizations filed a joint brief in the high court on behalf of three white and one Negro Episcopal clergymen who were arrested on September 13, 1961 in Jackson's interstate Trailways Bus Terminal when they tried to use a "whites only" waiting room. The clergymen were members of a "Prayer Pilgrimage" visiting church institutions in both the South and the North to dramatize the message that "the Church must become...one Holy Fellowship where racial barriers have been done away."

The ACLU-~~CORE~~ SEDF brief contended that a Jackson, Miss. municipal police justice "conspired with police officers to have white and Negro ministers arrested, convicted and sentenced to jail for the sole purpose of enforcing the segregation laws, customs or usages of the State of Mississippi." The brief backed up its contention by pointing to police ~~trial~~ testimony at the trial that racial mixing is wrong in bus stations or anywhere else, that a Negro had never gone into the "white" waiting room without being arrested and that if the ministers "did it again today" they would again be arrested.

The clerics were convicted of a breach of the peace under a statute later declared unconstitutional and were given ~~xxxxxxxxx~~to the maximum sentence of four months in jail and $200 fine. At the trial there was no evidence that the ministers had been disorderly in any way. The case was tried by Police Justice Spencer, who had previously tried almost all the cases (some 50 trials and 300 defendants) which arose out of efforts to integrate the Jackson bus terminal.

Ruling on the clerics appeal, the Fifth Circuit U.S. Court of Appeals for the 5 held that the clergymen would normally be entitled to a verdict on the issue of ~~the~~ liability because the arrests were improper but that the case should be heard again, because damages would not be recoverable if it were shown that the integrated group of ministers planned to go to places where they might be subject to arrest. The Court of Appeals also declared ~~that the arresting officers were immune from liability for false arrest, since they acted under a statute which was still constitutional at the time,~~ adding that Police Justice Spencer was immune from liability because he was a judicial officer.

Posing the issue before the U.S. Supreme Court, the ~~[illegible]~~ Joint brief stated "the question...is whether a police justice should be immune if he acts knowingly and willfully to deprive persons of their constitutional rights." The brief noted that the 1871 Civil Rights Act "provides no exceptions, no immunities," since it provides for the liability of "every" person depriving individuals of constitutional rights.

The brief emphasized the legislative history of the 1871 Act, asserting that "Congress in 1871 intended harsh remedies to check bloody terror, stubborn defiance, abuse of legal process and sham justice...after terror against and injustice to the newly freed black men and loyalists spread in the South." All members of Congress who spoke on the problem, the brief declared, "explicitly stated that [the Act] applied to judges. None disagreed." The brief also noted that the earlier Civil Rights Act of 1866 did not exempt judges from liability in willfully depriving persons of constitutional rights, pointing out that it was passed over the veto of Pres. Andrew Johnson, who opposed criminal liability for judges.

"Judges are the essential cog in a system of sham justice," maintained the ACLU-Defense Fund brief, adding: "Police Justice Spencer and others like him are the very persons the 1871 Congress sought to make liable. So long as they are ready to mask the intention of the police to arrest persons for daring to challenge illegal segregation laws and customs by permitting the purported use of breach of the peace or disorderly conduct statutes, sham justice will win out."

The Union-Defense Fund brief attacked the lower court contention that the policemen making the illegal arrest were free from liability if the integrated group of clerics knew that in exercising their constitutional right to travel together in interstate commerce might subject them to illegal arrest. The brief noted that both the police and the lower court admitted "the ministers did nothing to initiate arrest other than to enter the bus terminal as an integrated group." "Foreknowledge that a reasonable chance existed that the police would arrest and convict the clergymen for no legitimate reason," the brief asserted, "cannot be a basis for denying any liability on the part of the police to the clergymen, any more than if instead of arresting them, the police had physically beaten them." The brief commented: "One might as well say that those who ended their days in Dachau shared the guilt with those who put them there, by remaining in Germany when everyone knew how vicious the Nazis were."

In further argument the ACLU-~~Defense Fund~~ SEDF brief said: "Under the decision of the court below, the more openly and notoriously defiant and contemptuous of the Constitution, the less likely that a state official will be held liable ~~for~~ in damages for violating the Constitution." Under such a theory, stated the brief, "an official who goes on national television publicly to tear up the Constitution and announce that he will arrest and jail any black man seen walking with a white man ensures his freedom from damages ~~by~~ for making such an arrest by the very publicity he gives to his illegal intent."

The ACLU-~~Defense Fund~~ SEDF brief was prepared by ACLU legal director Melvin L. Wulf, Defense Fund Counsel Carl Rachlin, and cooperating attorneys Frederick A.O. Schwarz, Jr., Stephen M. Nagler, Marvin M. Karpatkin, Robert Collins, Nils Douglas, Lolis Elie, Ruth Jacobs, Ernest Finney and John D. Due, Jr..

Supreme Court of the United States

OCTOBER TERM, 19

Robert L. Pierson, et al
Petitioners,

vs.

J. L. Ray, et al

No. 1155

To Hon. Carl Rachlin, *Counsel for Respondent* :

You are hereby notified that the petition for writ of certiorari in the above-entitled and numbered case was filed in the Supreme Court of the United States on the 26th day of March, 1966.

The record filed pursuant to the requirement of Rule 21 (1) consists of:

(If the record was printed for the use of the court below, state here whether you have or have not filed nine copies as permitted by Rule 21 (4).)

Thomas B. Watkins
Counsel for Petitioner .

Form 75

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 21325

ROBERT L. PIERSON ET AL. APPELLANT
VS.
J. L. RAY, ET AL.
APPELLEE

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI
JACKSON DIVISION

BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Robert L. Pierson, John B. Morris, James P. Breeden and James G. Jones, Jr. appeal from a verdict by a jury in the District Court in favor of the defendants. The complaint alleges damages on two theories, (a) common-law tort of false imprisonment and (b) violation of the Federal Civil Rights statutes. The answers deny all material allegations.

STATEMENT OF FACT

On September 13, 1961 plaintiffs, all of whom are Episcopal Clergymen, together with eleven other Episcopal Clergymen entered the waiting room of the Continental Trailways Bus Station in Jackson, Mississippi, about 11:20 A.M. (R.89-90). Of this group of Clergymen, twelve were white and three were Negroes (R. 548, 181). Plaintiff Breeden is Negro, the other plaintiffs are white (Complaint ¶s 4-7). Plaintiffs and the others entered the station to continue their Prayer Pilgrimage from New Orleans, Louisiana, to Detroit, Michigan to the General Convention of their church (R. 179). All entered the bus station in an orderly fashion (R. 93, 597) and at that time possessed a Continental Trailways Bus ticket to

Chattanooga, Tennessee (R.179, 89). No one followed them in since it was only a minute from the cab to the station (R. 90, 597).

Upon entering the waiting room of the bus station, the plaintiffs, with the other Clergymen, proceeded leftwards toward the coffee shop in the bus station, because they had not eaten since early breakfast, nor would they get another chance prior to arriving in Chattanooga (R. 90). As the Clergymen entered the coffee shop, defendants Griffith and Nichols, both police officers of the City of Jackson, Mississippi, placed in the bus station by their superiors to intercept the group of Clergymen, said, "All right. Hold it right there." (R. 92). The plaintiffs obeyed the order and stopped.

Defendants Griffith and Nichols then stood before the group of Clergymen and ordered the Clergymen to "move along" (R. 95). The Clergymen then stated to the officers that they were due to catch a bus at 12:05 but were hungry and desired to eat (R. 95-6). Nichols and Griffith then stated twice more, "Move along."

Making no move, neither to obey nor disobey the order, Defendant Griffith placed the Clergymen under arrest (R. 96), although they didn't say or do anything to cause a disturbance (R. 597).

Defendant Nichols then left the group of Clergymen in charge of Defendant Griffith, and telephoned Chief Pierce, chief-of-police of the Jackson City Police Department (R. 596), who told him Chief Ray was already on his way down (R. 596). Officer testified that he was afraid violence would occur (R. 611), but never asked any of those he though would commit the violence to leave (R. 612). He knew this "violence" would occur even though no loud sounds were made and he spoke to no one (R. 612). Shortly thereafter Defendant Ray entered the bus terminal and without stopping walked directly to where the plaintiffs and other Clergymen were being held under arrest.

Without saying anything to anyone, including Griffiths and Nichols, or surveying the situation, he ordered the plaintiffs and other Clergymen to move along (R. 582-5). Plaintiffs then advised Captain Ray that they had a half an hour until their bus left and that they were hungry and wished to eat. Once more Captain Ray stated, "Move along", and then placed the plaintiffs and other Clergymen were loaded into the already waiting paddy wagon and taken to the City Jail in Jackson, Mississippi (R.100).

During the time the plaintiffs were in the bus station, they were guilty of no misconduct whatever (R. 609-10). While these events took place, no one else in the bus station (with the exception of the defendants) were guilty of any misconduct whatever (R. 609-12). No other persons in the bus station made any threatening gestures nor uttered any threatening words (R. 98). The other passengers in the bus station were unusually quiet and still in an attempt to observe and see what was happening (R.98). Defendants stated, however, that the other passengers were in an "ugly mood", but at no time did anything to investigate the certainty of the "ugly mood" or what was the cause of the mood (R.592, 611) (~~Tr. 289-290~~). Captain Ray came right away and had no time to determine these facts. (R.99)

Plaintiffs were regularly processed upon arrival at the Jackson, Mississippi City Jail (R.100-1). Held in jail until September 15, 1961, plaintiffs were tried in Municipal Court of the City of Jackson, Mississippi (R. 104) on the affidavits of Defendant Ray alleging the plaintiffs violated Section 2087.5 of the Mississippi Code of 1942. The trial judge, Defendant Spencer, found the plaintiffs guilty. They were sentenced to 4 months in jail and given $200.00 fines each (R. 104). Remaining in jail, Plaintiffs Breeden, Morris and Pierson were released on bond September 19, 1961 (R. 195) and Plaintiff Jones was released September 29, 1961, after losing substantial weight (R. 105-6).

Plaintiffs thereafter each regularly prosecuted appeals to the County Court of the First Judicial District of Hinds County, Mississippi.( ). In the _de novo_ trial of Plaintiff Jones before the County Judge he was found not guilty because there was no proof of any statutory violation. (R. 107). The city's prosecutor at this time moved that the charges against the other plaintiffs be _nolle presequied_ because the evidence in the other cases was the same as in the Jones case. The County Judge sustained motion and the charges against the other plaintiffs marked accordingly (R. 245). Thereafter this action was commenced in the U.S. District Court and tried before Hon. Sidney Mize.

During the trial on this complaint, Judge Mize allowed the defense attorney to question each witness concerning prior racial strife and freedom rides to the City of Jackson, Mississippi, over the repeated objections of the plaintiffs' attorneys (R. 129-162, 202-34, 249-269, 280-373, 399-426.

In addition, Plaintiff Jones was cross-examined extensively concerning his belief as to a purported statement from the Daily Worker of 1929, as well as the reading of the statement from the Daily Worker (R. 155-164). The plaintiffs' attorneys repeatedly objected to the above testimony and after the plaintiffs' objections were repeatedly overruled the plaintiffs moved for a mistrial based on this highly prejudicial series of questions, which was denied (R. 156).

While Plaintiff Morris was cross-examined, the Court permitted the reading into testimony of private letter he had written several months prior to the arrests to other members of the Clergy (R. 280-373), all contended by plaintiffs to be irrelevant and for the purpose of inflaming the jury.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 21325

ROBERT L. PIERSON, ET AL.	APPELLANT
VS.	
J. L. RAY, ET AL.	APPELLEE

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI
JACKSON DIVISION

BRIEF OF APPELLANT

CARL RACHLIN
165 West 46th. Street
New York, New York

L. H. ROSENTHAL
221 North President Street
Jackson, Mississippi

INDEX

PRELIMENARY STATEMENT 1

STATEMENT OF FACTS 1

POINTS INVOLVED 4

ARGUMENT 4

CONCLUSION 10

CERTIFICATE 11

AUTHORITIES CITED

Nesmith, et al. v. Alford, et al.
318 F.2d 110 4

Nesmith, et al. v. Alford, et al.
318 F.2d 110 5

Nesmith, et al. v. Alford, et al.
318 F.2d 110 6

Corpus Juris Secundum
Vol. 5A, Page 949 7

Morrow v. United States
101 F.2d 654 8

Twachtman v. Connelly
106 F.2d 501 8

Twachtman v. Connelly
106 F.2d 501 9

American Jurisprudence
Vol. 20, Page 239 9

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRTH CIRCUIT

NO. 21325

ROBERT L. PIERSON ET AL. APPELLANT
VS.
J. L. RAY, ET AL. APPELLEE

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI
JACKSON DIVISION

BRIEF OF APPELLANT

PRELIMINARY STATEMENT

This cause is here on appeal by the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden and James G. Jones, Jr. from a verdict by a jury in the District Court in favor of the defendants.

STATEMENT OF FACT

On September 13, 1961 plaintiffs, all of whom are Episcopal Clergymen, and eleven other Episcopal Clergymen entered the white waiting room of the Continental Trailways Bus Station in Jackson, Mississippi, about 11:30 A.M.(Tr. 9-10). That of the group of Episcopal Clergymen, twelve were members of the Caucasian race and three were members of the Negroe race(Tr. 81). The purpose for which the plaintiffs and other Clergymen entered the station was to continue their Prayer Pilgrimage from New Orleans, Louisiana, to Detroit, Michigan to the General Convention of their church(Tr. 80). That the Clergymen all entered the bus station in an orderly fashion(Tr. 13) and at that time each possessed a Continental Trailways Bus ticket to Chattanooga, Tennessee(Tr. 80).

That after entering the waiting room of the bus station the plaintiffs with the other Clergymen proceeded toward the coffee shop, which was part of the Continental Trailways Bus Station, for the purpose of obtaining food due to the fact that they had not eaten since an early breakfast and would not get another chance to eat until arriving in Chattanooga, Tennessee(Tr. 11). As the Clergymen began to enter the coffee shop, the defendants Griffith and Nichols, both of whom were police officers of the City of Jackson, Mississippi, placed in the bus station by their superiors to intercept the group of Clergymen, ordered the plaintiffs, "All right. Hold it right there"(Tr. 13) The plaintiffs obeyed the order and stopped. The defendants Griffith and Nichols then crossed the bus station and came to stand before the group of Clergymen, officer Griffith and Nichols then ordered the clergymen to "move along"(Tr. 15). The Clergymen then stated to the officers that they were due to catch a bus at 12:05 and until that time they desired to eat due to the fact that they were hungry(Tr. 15-16). The defendants, Nichols and Griffith then stated twice more, "Move along." The Clergymen made no move at all, neither to obey the order nor to disobey the order, and when failing to move along as ordered Defendant, Griffith placed the Clergymen under arrest(Tr. 16). Defendant Nichols then left the group of Clergymen who were under arrest, leaving them in charge of Defendant Griffith and went to place a telephone call to Chief Pierce, who at the time of arrest was a chief of police in the Jackson City Police Department(Tr. 285). Shortly thereafter defendant Ray entered the bus terminal and walked directly to where the plaintiffs and other Clergymen were being held under arrest. Without saying anything to anyone or surveying the situation he ordered the plaintiffs and other Clergymen to move along(Tr. 302). The plaintiffs then stated to Captain Ray that they had a half an hour until their bus left and that they were hungry and wished to eat. Captain Ray stated again, "Move along" and then placed the plaintiffs and other Clergymen under arrest once again(Tr. 19). The plaintiffs and other Clergymen were loaded into a paddy wagon and taken to the City Jail in Jackson, Mississippi(Tr. 20-22).

That during the time the plaintiffs were in the bus station they were guilty of no mis-conduct whatever(Tr. 289-290). Also during this time no one else in the bus station, with the exception of the defendants, were guilty of any mis-conduct whatever(Tr. 289-290). That no other persons in the bus station made any threating gestures nor uttered any threating words(Tr. 18). That the other passengers in the bus station were unusually quiet and still in an attempt to observe and see what was happening(Tr. 18). That the defendants felt that the other passengers were in an "ugly mood", however, the defendants did nothing to investigate the certainty of the "ugly mood" or what was the cause of the mood(Tr. 289-290).

Plaintiffs were regularly processed upon arrival at the Jackson, Mississippi City Jail(Tr. 20). The plaintiffs were held in jail until September 15, 1961 when they were tried in Municipal Court of the City of Jackson, Mississippi(Tr. 20) on the affidavits of defendant Ray alleging the plaintiffs violated section 2087.5 of the Mississippi Code of 1942. That the trial judge at this trial was defendant Spencer who found the plaintiffs guilty and sentenced the plaintiffs to 6 months in jail and $200.00 fines each(Tr. 20). Plaintiffs Breeden, Morris, and Pierson were released on bond September 19, 1961(Tr. 95) and plaintiff Jones was released on bond September 29, 1961(Tr. 24).

That the plaintiffs each regularly prosecuted appeals to the County Court of the First Judicial District of Hinds County, Mississippi(Tr. 26). That the County Judge in the trial of the case of Plaintiff Jones found him not guilty stating his reason therefor as being that he had done nothing wrong(Tr. 20). The City's prosecutor at this time moved that the charges against the other plaintiffs be molle prosequi because the evidence in the other cases were the same as in the Jones case. The County Judge sustained motion and the charges against the other plaintiffs were molle prosequi(Tr. 138-139).

During the trial in the District Court the trial judge allowed the defense attorney to question each witness concerning prior racial strife and freedom rides to the City of Jackson, Mississippi, over the repeated objections of the plaintiffs' attorneys(Tr. 45-51, 115-121, 249-253, 355-356, 369-370, 379-380).

The trial Judge permitted plaintiff Jones to be cross examined extensively concerning his belief in regards to a proported statement from the Daily Worker as well as the reading of the statement from the Daily Worker(Tr. 59-66). The plaintiffs' attorneys repeatedly objeced to the above testimony and after the plaintiffs' objections were repeatedly overruled the plaintiffs moved for a mistrial, which was denied(Tr. 57-59).

That during the course of the cross examination of plaintiff Morris, the Court permitted the reading and testimony concerning private letters he had written several months prior to the arrests that were in issure(Tr. 108-114, 145-160, 169-214).

POINTS INVOLVED

1. The Court erred in not granting the Motion for a Directed Verdict for the plaintiffs.

2. The Court erred in admitting the evidence of prior racial strife, particularly evidence of so call freedom rides in and to the City of Jackson, Mississippi.

3. The Court erred in admitting the evidence of the reading of the proported statement from the Daily Worker and in not granting the Motion For A Mistrial.

4. The Court erred in admitting into evidence the letters of John Morris and evidence related to the letters concerning the Prayer Pilgrimage.

ARGUMENT

Under the facts the plaintiffs were entitled to a directed verdict as a matter of law and the jury should have received the case to consider the amount of the damages alone, and we are of the opinion that the Court erred in this case in the following particulars:

(1) The Court erred in not granting the Motion for a Directed Verdict for the plaintiff.

The facts in this case are undisputed in that the plaintiffs were restrained of their liberty under the probable imminence of force without any legal cause or justification therefor. This as a matter of law established the right of the plaintiffs to a directed verdict in their favor on the first count of their complaint.

In this regard Barbara A. Nesmith and Richard A. Nesmith v. H. D. Alford, et al., decided May 30, 1963, 318 F.2d 110, is virtually on all fours with the instant case. Mr. and Mrs. Nesmith ate lunch with people of both races in what was normally considered a Negro cafe in Montgomery, Alabama. During the time the Nesmiths and their group were eating a crowd gathered around the cafe. Neither the Nesmiths nor any member of their group did anything wrong inside the cafe. They were asked by the police to leave, they refused to leave and were arrested. Each was conviced in the lower Court, each appealed the conviction and was found not guilty with the exception of Richard A. Nesmith who was found guilty and appealed the conviction to the Alabama Court of Appeals which reversed the convictions for a defect in the complaint.

The decision in the Nesmith is in point:

> "Nor in other significant respects do we find Alabama law to be at substantial variance with the common law as generally developed in other states. All that is necessary to establish false imprisonment is that an individual be restrained of his liberty under the probable imminence of force without any legal cause, or justification therefor. It is not necessary to show actual force, threats, or injury done to the individual's person, character, or reputation. The lack of malice, the presence of good faith, or the presence of probable cause do not affect the existence of the wrong when the detention is unlawful. If the act of the officers arresting a person without a warrant is unlawful, the imprisonment is false.

Further the plaintiffs were entitled to the motion as a matter of law based on the second count of their complaint, violation of their civil right as the undisputed facts shows that the defendants all acted under the color of law in perpertrating their wrongful acts. Barbara A. Nesmith and Richard A. Nesmith V. H. D. Alford, et al., decided May 30, 1963, 318 F.2d 110, is directly in point here also, the Court states:

> "This count was based on 42 U.S.C.A. § 1983. It was stipulated that the Defendants' action were done under color of State law. We have no doubt that as to a number of the actions, the proof showed as a matter of law that the conduct of one or more or all of the three officers at the restaurant violated one or more Civil Right. To this extent, the plaintiffs' motion for instructed verdict certainly ought to have been granted."

> "Certainly since Monroe V. Pape, 1961, 365 U. S. 167, 187, 81 S. Ct. 473, 5 L. Ed. 2d. 492, violation of some of the Civil Rights of these plaintiffs was established as a matter of law. These included the freedom from unlawful arrest, freedom of speech and freedom of association. This includes the freedom of a white man peacefully to associate with Negros in

a public restaurant free from the actual or threatened arrest by police officers as a means of enforcing racial segregation."

(2) The Court erred in admitting the evidence of prior racial strife, particularly evidence of so called freedom rides in and to the City of Jackson, Mississippi.

The Court repeatedly through the cross examination of each witness for the plaintiffs and throughout the direct examination of each witness for the defense allowed witnesses to testify to racial strife in the City of Jackson, Mississippi and to freedom rides to the City of Jackson, Mississippi over the repeated objections of plaintiffs' counsel. This Court has stated that such evidence is not admissible and indicated that admission of such evidence would constitute reversible error. Again Barbara A. Nesmith and Richard A. Nesmith V. H. D. Alford, Decided May 30, 1963, 318 F.2d. 110, is directly in point. Concerning itself with this matter the Court stated:

> "By the comments made both in Part IV and V involving either the concept of probable cause or those akin to it, and the element of malice, we necessarily recognize that considerable latitude must be allowed to the trial Judge in the receipt of evidence bearing upon those factors. Likewise, in fixing punitive damages for false imprisonment(Part III) or malicious prosecution (Part IV), evidence bearing on good faith would be admissible. But this has to do with facts and circumstances surrounding the incident giving rise to the arrest, the imprisonment, or the criminal prosecution making up the subject matter of the damage suit. Thus a wide discretion must necessarily be invested in the trial Judge as to events occuring on that day (and the following day when the criminal prosecutions were formally commenced).

> But what took place a month before can have no bearing at all in determining whether the act of white people eating with Negroes in a public restaurant in Montgomery constitutes any kind of crime whatsoever. If this were admissible, then there would have been little reason not to include evidence of the physical brutality and violence growing out of the Freedom Riders in Alabama, Mississippi, and other Southern states, see Bailey V. Patterson (3 Judge Court), S.D. Miss., 1961, 199 F. Supp 595; reversed 1962, 369 U.S. 31, 82 S. Ct. 549, 7 L. Ed. 2d. 512; the violence which had occurred a few years before in Montgomery bus strike, Gayle V. Browder, D.C. Ala. (3 Judge Court), 142 F. Supp. 707, affirmed 1956, 352 U.S. 903, 77 S. Ct., 145, 1 L. Ed. 2d. 114; or for that matter any historic episodes out of which these strong emotions arise."

(3) The Court erred in admitting the evidence of the reading of the proported statement from the Daily Worker and in not granting the Motion For A Mistrial.

The introduction of the reading of the Statement from the Daily Worker and the question concerning the plaintiffs' beliefs as either being the same or different was immaterial to the issure being tried and the sole purpose for its admission was to inflame the minds of the jury against the plaintiffs. The Courts have long held that the introduction of such evidence constitutes grounds for reversal. Corpus Juris Secundum, Vol. 5A, Appeal and Error, Section 1724, Page 949, states the law governing the introduction of such evidence as follows:

> "On the other hand, the admission of incompetent evidence which operates to the prejudice or injury of the rights of the complaining party is prejudical or reversible error, as is the admission of evidence which tends to becloud the issue or to distract the attention of the jury from the real issues in the case, or to give the jury an opportunity to substitute the finding of a criminal jury for its own independent judgement.

Likewise, the admission of evidence which, although immaterial or irrelevant, tends to mislead, confuse, or prejudice the jury, or to provoke sympathy for the party offering the evidence, is grounds for reversal. Further, error in the admission of evidence may constitute grounds for reversal where such addmission tends to inflame the minds of the jury against one of the parties to the cause, or impeaches the evidence of the party cast."

The Circuit Court of Appeals Seventh Circuit stated the governing rule concerning the mere asking questions to inflame the minds of the jury in Morrow V. United States, decided Feb. 2, 1939, 101 F.2d. 654, as follows:

> "There are cases where counsel persists in propounding improper questions and where it is clear that the questions are asked not to secure information but to prejudice and poison the jury's mind. In such cases a court may justifiably order a mistrial."

The Circuit Court of Appeals, Sixth Circuit, states the rule governing the asking of improper unrelated questions in the case of Twachtman V. Connelly, decided Sept. 18, 1939, 106 F.2d. 501, as follows:

> "Counsel should not introduce extraneous matters before a jury or, by questions or remarks, endeavor to bring before it unrelated subjects and, where there is a reasonable probability that the verdict of a jury has been influenced by such conduct, it should be set aside."

(4) The Court erred in admitting into evidence the letters of John Morris and questions related to the letters concerning the Prayer Pilgrimage.

The letters introduced into evidence wasnwholely irrelevant to the issure being tried. The contents of no letter introduced was able to shep any light whatever on the legality of the arrest of the plaintiffs, plainly since each of the letters were written months before the arrest took place. Clearly the admission of such irrelevant evidence was error since the Courts have long held that in order for evidence to be admissible it must be relevant. The Circuit Court of Appeals, Sixth Circuit, states the relevancy rule thusly in Twachtman V. Connelly, decided Sept. 18, 1939, 106 F.2d. 501:

> "Under the rule that evidence must be confined to the points at issue, that the attention of juries may not be distracted nor public time needlessly concumed, collateral facts are excluded which have no connection with subject litigated and are therefore incapable of shedding light on the inquiry or affording grounds for reasonable presumptions or inferences."

The rule that for evidence to be admissible it must be relevant to the issure at bar is stated thusly in Americal Jurisprudence, Vol. 20, Evidence, Page 239, section 246:

> "One of the elementary rules of evidence is that matters offered in evidence must be relevant to issues of the case and tend to establish or disprove them. Irrelevant facts and circumstances----that is, those which do not throw any light upon, or have any logical relation to, the facts in issue which must be established by one party or disproved by the other or which are remote and collateral----are not properly admissible in evidence and upon proper objection must be excluded. This principle is applicable to the use of book papers, and records as evidence and to the use of real or demonstrative evidence, as well as to oral testimony."

CONCLUSION

It is clear that the decision of the District Court was contrary to the overwhelming weight of the evidence and that the Court was in error in failing to grant plaintiffs' motion for directed verdict and other respects heretofore pointed out. We respectfully submit that the decision of the District Court should be reversed and the caseeremanded to the District Court for a trial on the issues of damages alone.

Respectfully submitted,

CARL RACHLIN
165 West 46th. Street
New York, New York

L. H. ROSENTHAL
221 N. President Street
Jackson, Mississippi

BY

L. H. ROSENTHAL

CERTIFICATE

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, copies of the foregoing brief to Honoragle Thomas H. Watkins and the Honorable E. W. Stennet, attorneys for Appellees, at their usual business addresses.

Dated at Jackson, Mississippi, this the ---__day of ________ 1964.

____

L. H. ROSENTHAL

File
Pierson-Ray

WILLIAM H. WATKINS
1895-1959

PAT H. EAGER, JR.
THOMAS H. WATKINS
ELIZABETH HULEN
WM. E. SUDDATH, JR.
WM. F. GOODMAN, JR.
JAMES A. BECKER, JR.
JOE W. HOBBS
H. H. WHITWORTH
W. THAD COCHRAN

WATKINS & EAGER
ATTORNEYS AND COUNSELORS AT LAW
800 BANKERS TRUST PLAZA BUILDING
P. O. BOX 650
JACKSON, MISSISSIPPI 39205

AREA CODE 601
353-2711
353-7218

Spoke to
Len Rosenthal
today
Carl

March 1, 1968

AIR MAIL

Carl Rachlin, Esq.
Attorney at Law
150 Nassau Street
New York, New York 10038

RE: Pierson, et al v. Ray, et al
Civil Action No. 3315
U. S. District Court
Jackson, Mississippi

Dear Carl:

This is to remind you that this case is set for trial in the U. S. District Court at Jackson for 9:00 a.m. Tuesday, March 5, 1968, and the defendants will be ready for trial.

I have been unable to get in touch with either you or Mr. Rosenthal by telephone, but I want to make some final disposition of this matter when the case is called on March 5.

With kindest personal regards, I remain

Sincerely,

Tom
Thomas H. Watkins

THW:mb
cc: Leonard H. Rosenthal, Esq.
406 West Capitol Street
Jackson, Mississippi

APR 23 REC'D

1030 Manship St.
Jackson, Miss, 39202
April 21, 1964

Mr. Carl Rachlin
Vladeck & Elias
280 Broadway
New York 7, N.Y.

Dear Carl:

I'm sorry I missed you yesterday. I got the message that you had called, and hoped you would call again so we might have gotten together for a while during your brief visit. I felt it was a bit awkward for me to call the clerk's office and leave a message for you, so I didn't try to reach you. I hope you had a good visit. But next time stay longer!

I was rather hoping we might discuss the results of my analysis of Pierson v. Ray, which has finally been completed, and is enclosed herewith.

Probably the amount of time I have spent on this project (which I calculate to have been 59&2/3rds hours) is entirely disproportionate to what you initially had in mind. Without knowing precisely what you had in mind, wanting to do a good job, and at the same time feeling that the case was extremely important because of the path (hopefully) it might be blazing for other such tort suits, I have simply expended the amount of time I felt necessary to feel somewhat confident I had not missed any major problems, or solutions, and had some worthwhile thoughts to pass on, in terms of both the present appeal and future cases. I think I have wound up doing everything but write the brief for you, which perhaps I might just as well have done (except that I have worked only with Mississippi cases to the extent of getting a grasp of them, and omitted federal cases, on the assumption someone else might already be expert in that domain and my work might be duplicatory).

At least 10 of my hours should be written off as typing (and hence nonchargeable) leaving a bill, at my rate for work here, of $496.65. I hope, in view of the nature of the analysis, and the future litigation you contemplate (which I have tried to place on the most [redacted] realistic footing, to obtain worthwhile recoveries) [redacted] this bill is not too much. If it is, please let me know. I will adjust it to whatever you think appropriate. In a more condensed, and generalized form, the basic results may be of interest to someone else who would not object to paying me for the unpaid portion, so to speak.

Also enclosed, as of possible use to whoever writes the appeal brief, are my notes on the major incidents in the Record, by page. Read with, and alongside of, my references to the Record in the analysis, they may be helpful in isolating the pertinent portions of the Record, or in getting a fast view of the whole trial. [redacted]

If I can do any further work (with or without deadline(s)) please let me know. And if the analysis isn't at all helpful, please let me know that, too.

With very best wishes,

L. H. ROSENTHAL
ATTORNEY AND COUNSELLOR AT LAW
221 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI
353-8143
939-1645

April 24, 1964

APR 28 REC'D

Hon. Carl Rachlin
165 West 46th Street
New York, New York 10036

Re: Pierson, et al.
Vs. Ray, et al.

Dear Sir:

Enclosed you will find my draft of the brief in the above styled case.

I checked the local printing prices and the going price seems to be $4.50 per page. Perhaps you should consider E. L. Mendenhall, Inc., they were highly recogmended by several of the local printers who dose not do legal printing.

Your truly,

L. H. Rosenthal
L. H. Rosenthal

LR/fr

Enc.: Draft and copy of brief in cause No. 21325 [illegible] ✓ Morris MAY -1 REC'D

Jackson, Mississippi
April 29, 1964

Dear Mr. Rachlin:

It occurs to me the following Mississippi statute might be of considerable use in the Pierson v. Ray appeal, for a variety of reasons. I referred to it in my analysis in the section dealing with "intent", and by later reference "malice", but could not supply a citation at that time.

Chapter 5 of 1st Extraordinary Session of 1962:

> Section 1: Municipalities authorized to "investigate and provide legal counsel for the defense of any claim, demand or action, civil or criminal" against any "municipal officer, agent, servant, employee or appointee" for conduct while acting in such capacity and "to pay for all costs and expenses incident to such investigation and defense."
>
> Section 2: "That any municipality of this state be and it is hereby authorized and empowered , within ~~the~~ the discretion of its governing authorities, to pay and satisfy any judgment, fine, or penalty which may be made, assessed or levied by any court against any municipal officer, agent, servant,employee or appointee as a result of any actions of such municipal agent, officer, servant, employee or appointee while acting as such."

The measure was adopted and went into effect on October 6, 1962. Though this is of course subsequent to the events involved in Pierson v. Ray the act, I believe, retrospectively casts a revealing light on the question whether city (and state) authorities approved and directed the conduct of Griffith, Nichols, Ray (and Spencer), continue to approve such conduct, and whether or not a departure from traditional tort law is warranted by virtue of the circumstances existing in Mississippi.

Incidentally, though a municipal taxpayer of course has standing to contest the lawfulness of an expenditure of funds by the city, and Chapter 5 could thus eventually be contested in that manner, assuming a recovery by the present plaintiffs, would they have standing, as by refusing to accept a city-originating tender and proceeding to levy upon property belonging to the defendants, to raise the validity of this law? If even the modest recoveries which eventually result must be paid by the defendants individually, from their own resources, we would see a new attitude toward "instant arrests" here.

Regards,

E.

165 West 46th Street,
New York, New York 10036
May 12, 1964

Mr. Ed Wright
1030 Manship Street
Jackson, Mississippi

Dear Ed,

Thanks for your recent correspondence concerning *Pierson v. Ray*. Since I had not heard from you for such a long period of time, and because I was so terribly tied up myself, I asked Leonard Rosenthal to do the brief. Fortunately, he prepared a draft which I edited as best I could, and this draft was filed in New Orleans with the Fifth Circuit just about the time that I received your main memo on the case.

As you perhaps know, we had run into some serious trouble because of the delay; Watkins had made a motion to docket and dismiss. Fortunately, before he had made his motion, I had docketed the case. I had been waiting for your memo, but felt that I was running into dangerous ground because I was going over my time, and the coincidence of my docketing a day or two prior to the filing of Watkins' motion was a lucky break for me because we might have had our case dismissed if I hadn't. Therefore, I am a little concerned about what to do about the time you put in, since I realize how substantial it was. I really thought, however, that you were more than involved in many professional activities locally and just weren't about to get around to doing any work on this matter.

It is my present intention, as soon as we receive an answering brief, to submit a reply brief. I honestly hope that our reply brief can be better than our main brief since, in all candor, while it makes the main points, I do not think it sharp enough or sufficiently explicit. I believe that Tom Watkin's brief will open up for me an opportunity to submit a good reply. Let's keep the matter open and discuss it further.

Please give my regards to your lovely wife and baby.

Sincerely,

CARL RACHLIN

CR/hs

MAY 19 REC'D

Jackson, May 18, 1964

Pierson v Ray

Dear Carl,

I was very much concerned at the passage of time in getting any material on *Pierson v Ray* to you, but, on my part, the nature of the assignment (which, as you recall, was to "analyze the record", but not to write a brief) and the lack of any word from you as to a deadline, caused me to give some other, apparently more urgent, matters, priority. If you had dropped me a line, I believe I could have finished up soon enough for the analysis to be useful in regard to brief preparation.

In any event, I think you will agree that the problems which arise in *Pierson v Ray* are so substantial, from the standpoint of obtaining any meaningful relief by suits of this kind in Mississippi, yet their solution so potentially important, that there would really have been no justification for my working up an analysis, in the first place, if it were to deal only with *Pierson v Ray* issues narrowly. Or, to put it more precisely, fifty or even twenty hours of work I feel could not be justified at the expense of the plaintiffs Remainders (Pierson, Jones, Breeden, & Morris) in view of their dim prospects for even a modest recovery. But could be justified only if this were the forerunner of other cases, or a definitive case, an unsatisfactory outcome of which would mean no further such suits would be brought. In either each case, the expense of a thorough threshing out of issues and possibilities should be borne, it seems to me, by CORE, or by another interested organization, certainly if no recovery eventuates (and if one does, such expense shall be attorneys' fees, , hopefully, recoverable from the defendants).

I don't know whether you've had a chance to read my memo, or only to look at it, hurriedly. Albeit late, so far as the present brief is concerned, I think you will find it a good deal more useful than for the present brief: reply-brief, oral argument, re-trial, further and higher appeal, and later cases, are other, even more important uses. (Nor is all the work done, that needs to be done: Another 50 hours of pure research, in federal and Mississippi cases is needed, I would say, to be more confident of the Mississippi answers, and of the federal possibilities.) Frankly, I think in terms of the larger picture, I have done *not less* than $500 worth of work. More generously, in the domain of recovering civil attorneys fees in such suits, the value of my work might be closer to several thousands of dollars. (I understand, incidentally, from Bruce Waltzer, Ben Smith's partner, that they have compromised the Nesmith case. He was quite intrigued, and no little taken by surprise, at the thought of recovering attorney's fees in such suits.)

You will be receiving a letter shortly, I believe, from one John Garner, a professor at Tougaloo, who was arrested at Galloway Methodist Church here last October. Though a member of the church, he was arrested for attempting to bring along with him to his Sunday School class a negro student at Tougaloo. Two white Methodist ministers, from out of state, were also arrested with John, and the student, on the same occasion.

John's state prosecution has never gone to trial. His, and eleven other cases (including all in his own group of 4) were removed to federal court, remanded, but the remand order (or state prosecution) stayed by the 5th Circuit, pending the outcome of the Clinton, Louisiana, case, and a related injunction suit, I have suggested that John write you, Kunstler, and Pratt, to ask if any of you would agree to handle his case, on a contingency basis. It seems to me that a false arrest-false imprisonment suit would be particularly appropriate in his case *now*, as a means of obtaining an expeditious declaratory judgment, so to speak. As long as stay orders, after removal and remand, are available, I see no reason not to take advantage of them in this way.

I would appreciate your reading my memorandum, if you haven't as yet, and giving me an appraisal of its value, not in terms of the present plaintiffs in *Preiser*, but in terms of other such cases. I'm afraid I'm not financially in a position to forego the fee suggested, including any awaiting of later developments in the case, which might possibly be rather delayed. But if, in your honest opinion, the memo isn't worth my price, then I'd appreciate your returning it, and I will see if anyone else may evaluate it differently.

With best regards,

Ed

COPY

FROM
WATKINS & EAGER
JACKSON 5, MISSISSIPPI

P. O. BOX 650
TELEPHONES FL 3-2711
FL 3-7215

Franklin &
White
2265
Washington
Cir
Bx 5 ?

May 20, 1964

MAY 22 Rec'd

Mr. Edward W. Wadsworth, Clerk
Circuit Court of Appeals, Fifth Circuit
P. O. Box 30120
New Orleans, Louisiana

In re: No. 21,325 - 5th Circuit Court of Appeals
Robert L. Pierson, et al, Appellants
v. J. L. Ray, et al, Appellees

Dear Mr. Wadsworth:

Would you please be so kind as to make one correction in the twenty-nine copies of Brief for Appellees that were forwarded to you yesterday. Please change the word "duty" to "jury" on Page 34, the second line from the bottom.

Thank you.

Sincerely yours,

WATKINS & EAGER

By
Elizabeth Hulen

EH/jhw

cc: Carl Rachlin
165 West 46th Street
New York, New York

L. H. Rosenthal
221 North President Street
Jackson, Mississippi

The Episcopal Society for Cultural and Racial Unity

ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

MAY 29 REC'D

May 26th, 1964

Mr. Carl Rachlin
Vladeck and Elias
280 Broadway
New York 7, New York

Dear Carl:

We have received the bill for the appeal briefs and have paid it. Didn't you tell me on the telephone that you would send me a copy of this? If you have got one to spare I would be interested in seeing it, but it isn't necessary.

Also, let me know if you get any further ideas AS to when the verbal arguments will be heard and where this will take place.

* We are still waiting for baby number four (as of when I dictated this, May 22nd), but you are still welcome to stop by here for a visit and a bit of a rest sometime this summer. Let us know if you will be in the area.

Yours faithfully,

The Reverend John B. Morris
Executive Director

JBM/vg

* May 25 - Ellen Hallowell Morris.
All doing fine!

June 24, 1964

Airmail

Alvin Binder, Esq.
Binder & Bush, Esqs.
218 South President Street
Jackson, Mississippi

Dear Al:

I find that I need some legal advise which I trust you can give to me. Enclosed is a letter that I received from your State Tax Commission together with my response.

As my attorney, I tell you that my firm received a retainer from CORE until February 1, 1964. After that it was payable directly to me. I have appeared in several Mississippi courts on a few, but not many, occasions, both Federal and state. In the spring of 1963, the firm of which I was then a member, Vladeck and Elias, whose address at that time was 280 Broadway and whose present address is the same as mine above, received a fee of $1,000.00 for the preparation and trial of the case entitled Pierson vs. Ray, tried last May before Judge Sidney Mize. This involved a suit for civil damages against various police officers for false arrest of plaintiff and three other Episcopal ministers. The case, as you perhaps know, resulted in a Defendant's verdict. It is presently on appeal to the Fifth Circuit.

This is the only occasion in which money was received by my firm for a case tried in the State of Mississippi. For whatever importance it has, the money was paid for no particular reason outside of the State of Mississippi. As I recall, a check came from Atlanta to our office in New York.

Any advice you can give me on this would be most appreciated. Like everyone else, I may not like, but I do pay the taxes I owe. I really don't see what tax I owe here, but I would appreciate your advice.

Sincerely,

CARL RACHLIN

CR/hs

P.S. By the way, did you ever hear from that camp in New Jersey? I promptly gave them your name and address.

JUL 21 REC'D

1030 Manship St.
Jackson, Miss.
July 20, 1964

Dear Carl:

My efforts to see you again while in New York came to naught. Thanks for the invitation to the meeting, but I was too occupied with work and other matters to make it.

The Nesmith case suggests the way toward an extraordinarily potent instrument against misuse and abuse of state power, but only if Nesmith can be extended to permit the recovery of significant damages despite a hostile jury. The nature of the compromise settlement reached in Nesmith is not encouraging in this regard.

I am satisfied that the ideas incorporated in my memorandum of April indicated the right, if very difficult, way to follow Nesmith and make Peirson into the kind of supplemental decision in this vein it needs to be. Additional work I have been able to do lately, searching for sound approaches to relief where proof is sufficient for recovery but the jury refuses to make an adequate award, under both federal and Mississippi law, convinces me that the reasoning and authority exist upon which to achieve this necessary extension. For Mississippi, a legal revolution in the handling of individual wrongs seems likely as a result.

I would be glad to pass on the product of my research and labor, and it was with this in mind that I wanted to get together with you in New York. The absence of any allegation of malice or the equivalent in Pierson is not necessarily fatal; it reduces to an important extent the number of approaches, however, and I would not recommend this omission in cases to follow.

Since I was not able to see you, may I ask you to have a look at my last letter and let me know of your decision.

It continues to surprise me to think that your organization in involved in so much litigation but has no legal staff working for you. On matters such as the Pierson case, requiring great care and novelty in the preparation for trial and appeal if anything significant is to be achieved by the case, surely you are not expected to work wonders without assistance. And it is not much of an explanation to say that your organization is not "directly" concerned. Considering that Pierson can provide a means for recovering litigation expenses involved in the freedom rides, for compensating those arrested and imprisoned, and may either extend, or terminate, the Nesmith case, your organization is involved whether it wants to be or not. An adverse outcome, for reasons improperly deemed to be insurmountable, will be quite a serious setback.

If you are now in a position to reimburse me for my time previously billed, I will be glad to pass on to you the fruits of my now very substantial research. But I believe in all fairness to my family I must, in any event, remind you that payment on my bill is overdue. Very frankly, I deem the advice I have given, to say nothing of what I have to give, is worth far more than the price set upon it.

With kind regards, and regret that we could not get together for a discussion,

Sincerely,

Ed

L. H. ROSENTHAL
ATTORNEY AND COUNSELLOR AT LAW
221 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI
353-8143 939-1645

August 17, 1964

Please note date

AUG 19 1964

OK
ml

Carl Rachlin
38 Park Row
New York 38, New York

Re: Pierson, et al. vs.
Ray, et al.

Dear Sir:

Please find enclosed a calendar received from the United States Court of Appeals for the Fifth Circuit. Notice case numbered 21325.

I have exercuted the acknowledgement of the receipt of the calendar and returned it to the clerk's office.

With thanks for your courtesy and consideration in this matter, I am,

Yours truly,

L. H. Rosenthal
L. H. Rosenthal

LR/fr
Enc.:

L. H. ROSENTHAL
ATTORNEY AND COUNSELLOR AT LAW
221 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI
353-8143
939-1645

October 13, 1964

OCT 16 1964

Honorable Carl Rachlin
38 Park Row
New York 38, New York

Re: Pierson, et al. vs.
Ray, et al.

Dear Sir:

The only Mississippi case on false arrest and imprisonment with probable cause raised as a defense is J. C. Penny Company vs. Cox, 148 So.2d 679.

Please note that this case is distinguishable because of the 1958 Laws of Mississippi, Chapter 268 which specificly deals with shoplifting.

If I might suggest you might handle the reply brief as follows:

1. Establish the common law governing false arrest and imprisonment with probable cause as a defense, (American Jurisprudence, False Imprisonment, Section 28, Pages 370 & 371 of Volume 22)

2. Show how the law has been changed in Mississippi by the above mentioned act.

3. Show that the change did not affect our case and if the legislature had intended to alter the common law they would have made the act applicable to all acts of false arrest and imprisonment.

4. Show that had the common law in Mississippi been that probable cause been a defense the act above mentioned would have been only a restatement of the common law.

With thanks for your courtesy and consideration in this matter, I am,

Yours truly,

L.H. Rosenthal
L. H. Rosenthal

LR/fr

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

October 30th, 1964

NOV 2 1964

Mr. Carl Rachlin
CORE
38 Park Row
New York 38, New York

Dear Carl:

Have you gotten any word yet on when our appeal will be heard by the Fifth Circuit Court?

We had quite a time in St. Louis at our Churches National Convention, as you most likely saw by the newspapers. While it was a very frustrating Convention in many ways, I think it was really quite an honest Convention and saw many issues wrestled over which previously have been swept under the table.

Come down for a visit and I'll catch you up on things and hope that we will be able to go together soon for the conclusion of our case.

Yours faithfully,

The Reverend John B. Morris
Executive Director

JBM/vg

Dear John
We are on
November 17th. In a day
or two you will receive
a reply brief from me.
I'll keep in touch
Yours

Pierson v. Ray

11/6

November 4, 1964

Rev. John B. Morris
Executive Director
The Episcopal Society for Cultural
and Racial Unity
5 Forsyth Street, N.W., Room 200
Atlanta 3, Georgia

Dear John,

We are on November 17th. In a day or two you will receive a reply brief from me.

I'll keep in touch.

Yours,

Carl Rachlin
General Counsel

CR:hdl

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 FORSYTH STREET, N. W. PHONE 525-7975 ATLANTA, GEORGIA 30303

COPY

November 10, 1964

TO: JIM JONES
BOB PIERSON
JIM BREEDEN

GENTLEMEN:

The wheels of judicial process have turned and our case on appeal is to be heard before the Fifth Circuit in New Orleans on Tuesday, November 17th, according to Carl Rachlin.

It is not necessary for anyone to appear except for our attorneys. However, to give Carl some company and have one of us on hand for any purposes of information that might arise, I'll go. Sorry, but we can't afford from the "PPAF" to cover travel for the rest of you, and I'll be travelling on ESCRU.

But, if you should have other business in New Orleans, come along and meet Carl and me at the Royal Orleans Hotel on Monday evening, November 16th.

Enclosed is a copy of a "Reply Brief" in our case. This is the second in such documents prepared by our side, but I didn't have enough copies of the "Brief of Appellant" to send you one.

I'll let you know the the outcome. Then we'll evaluate the exchequer, etc., and see where we go from there.

Regards,

John

John Morris

cc: Carl Rachlin

See you at Royal Orleans
Monday —

Pierson v. Ray

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

DEC 3 1964

12/30
decision?

December 1st, 1964

Mr. Carl Rachlin
CORE
38 Park Row
New York 38, New York

Dear Carl:

When I got the bill recently from the Royal Orleans Hotel in New Orleans it seemed only to cover my charges there, although I had asked them to bill us for yours as well. If you have received a bill from them please forward it along and we will take care of it.

It was good being with you down there and I am anxiously awaiting their ruling. Then we can talk about the future and what steps should be taken, as well as consider whatever would be proper reimbursement to you for all of your time and concern in this venture.

Yours faithfully,

John

The Reverend John B. Morris
Executive Director

JBM/vg

Jim off Friday for a Week: Kansas City, Iowa, etc

December 9, 1964

The Rev. John B. Morris
Executive Director
The Episcopal Society for Cultural and
Racial Unity
Room 200
5 Forsyth Street, N.W.
Atlanta 3, Georgia

Dear John,

Thank you for your letter of December 1st. Indeed, the bill from The Royal Orleans came directly to us, though signed by you. I am sending it to you herewith.

It was good to see you in New Orleans. Let's hope your "headline" comes true!

Warmest regards,

Carl Rachlin
General Counsel

Enc./

CR:hdl

ROSENMAN COLIN KAYE PETSCHEK & FREUND
575 MADISON AVENUE NEW YORK, N. Y. 10022

SAMUEL I. ROSENMAN
RALPH F. COLIN
SYDNEY M. KAYE
WALTER J. PETSCHEK
MAX FREUND
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
ANDREW J. SCHOEN
JEROME L. SINDLER
ASA D. SOKOLOW
STUART ROBINOWITZ
GILBERT S. EDELSON

GODFREY GOLDMARK
COUNSEL

MURRAY HILL 8-7800
AREA CODE 212

CABLE ADDRESS
"ROCOKAY NEWYORK"

DEC 14 REC'D

(by hand)

December 12, 1964

BY HAND.

Carl Rachlin, Esq.
165 West 46th Street
New York, New York

Re: Garner v. Griffith

Dear Mr. Rachlin:

I return herewith, with thanks, your copies of the briefs in Pierson v. Ray, zerox copies of pertinent portions of which have been made for our files.

We are most interested in the Fifth Circuit's disposition of the Pierson case and would greatly appreciate being advised of the decision therein.

Thank you again for your kind cooperation.

Sincerely,

Harold S. Levy

Harold S. Levy

HSL:al
G170
Encl.

cc: Edward E. Wright, Esq.

Washington 12/17/64

DEC 18 REC'D

Dear Carl,

The elaborate paper on recovery of attorneys fees (and other items) in civil rights suits in Mississippi, of which we spoke, has undergone several drafts and is now nearing the 4th, and I think final, version. Together with footnotes (which number over 100) it is about 50 pages long and represents, conservatively, some 400 hours of work. Since most of it was done for Greenberg, with the intent of billing him for the part of it undertaken while in Mississippi, I intend to be presenting him with the bill, and also with the right to use its contents. You would find the paper of great use to you in Pierson v Ray, even at this late stage, for the avenues for relief which my research has opened up are remarkably diverse, as well as resting I think on an adequate, and even impressively sound, basis.

I will mention to Jack that the work I began on Pierson v Ray was what steered me in this direction, that he may want to make my paper, or part of it, available to you, but that I hope we can come to satisfactory terms as to my as yet unsettled bill first. Perhaps Jack will not object to picking up the tab for all of the work, since I could not have, and wouldn't have, done the research without the start provided by the work I attempted to do for you. Also, he may wish to intervene as amicus in Pierson v Ray, as a means of obtaining judicial recognition of ~~my~~ the remedies I elaborate, in the quickest manner. But by one means or another I wish to be remunerated for the work I did while trying to assist you.

I think you will be as gratified as I am at the avenues for recovery, despite jury hostility, which seem to exist.

Jack should be receiving my paper on or about the 21st.

With good wishes & cordial regards,

Sincerely,

Bel

January 17, 1965

Hon. John F. Davis, Clerk
United States Supreme Court
Washington, D. C.

RE: Pierson v. Ray

Dear Mr. Davis:

I enclose herewith original and copy of an application to be submitted to Justice Black for an extension of time in the above entitled case to file a Petition for Certiorari. I also enclose a copy of the opinion of the Fifth Circuit in this case.

I hereby certify that I have sent a copy of the application to the firm of Watkins & Eager of Jackson, Mississippi who represented the respondents in the Fifth Circuit.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Encs.

January 17, 1965

L. H. Rosenthal, Esq.
406 West Capitol Street
Jackson, Mississippi

RE: Pierson v. Ray

Dear Leonard:

We have decided to go to the United States Supreme Court in Pierson v. Ray. I hope you will want to continue to associate yourself with the case. A very able New York lawyer is in the process of preparing a Petition for Certiorari. It is essential that you have the Record on Appeal certified by the Clerk of the court so that we can file it with the Petition for Certiorari. Will you please check with the Clerk of your district court? I assume it is still Mrs. Wharton and take whatever steps are necessary to have the Record certified.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/os

File
Pierson v Ray

February 9, 1965

Edward Earl Wright, Esq.
Kominers and Fort
529 Tower Building
14th & K Streets, N.W.
Washington, D.C. 20005

Dear Ed:

I hope you are enjoying practicing in Washington and look forward to seeing you soon. Please keep in touch. We are absolutely broke now and I cannot, despite the work you did, pick up any part of this bill, certainly not at this time. The NAACP Legal Department and National Council of Churches are not broke, and I hope they will pay you. I am anxious to see the report.

My regard for you is very high, and I regret our finances.

We are waiting to hear on Pierson v Ray. I did a long reply brief because Watkins went off on a long erroneous road confusing the difference between malicious prosecution and false arrest. I hope the confusion was no more than ignorance. He did not appear at the argument, but sent a grandmotherly crippled lady who protested the vigor of our response.

Regards to Mrs. Wright.

Cordially,

Carl Rachlin
General Counsel

CR:jp

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

November 2, 1965

Mr. Carl Rachlin
Congress of Racial Equality
38 Park Row
New York, New York 10038

NOV 4 1965

Dear Carl:

It was good to see you down here and to have you aboard ship for an afternoon!

You asked me to write and remind you to send me the following items:

1) an analysis of the Moynihan report.
2) an article you have written on jury trials.
3) a copy of the Fifth Circuit Court ruling in our case.

We will await your considered judgement and advice on what our next steps should be with reference to the suit in Jackson.

You must come for a longer visit now that you know how things are down South!

Yours faithfully,

John

The Reverend John B. Morris
Executive Director

JBM/sat

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

October 25, 1965

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re: No. 21325 - Robert L. Pierson, et al
-vs- J. L. Ray, et al.

Gentlemen:

The following action has this day been taken in the above case:

( ) An extension of time has been granted to and including

- ( ) for filing and docketing record on appeal.
- ( ) for payment of estimated printing costs.
- ( ) for filing appellant's printing designation.
- ( ) for filing appellee's printing designation.
- ( ) for filing reproduced copies of the record.
- ( ) for filing appellant's brief.
- ( ) for filing appellee's brief.
- ( ) for filing a petition for rehearing.

(XXX) The Court's opinion has this day been rendered and a copy thereof is enclosed.

( ) Order enclosed has been entered.

( )

/bwc

cc: Mr. L.H. Rosenthal
✓Mr. Carl Rachlin
Mr. Thomas H. Watkins and Miss
Elizabeth W. Grayson
Mr. E. W. Stennett

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Clara L. James
Chief Deputy Clerk

FPI-ENO—1-12-65-10M-634

November 5, 1965

Reverend John B. Morris
Executive Director
The Episcopal Society for Cultural
& Racial Unity
Room 200
5 Forsyth Street, N. W.
Atlanta 3, Georgia

Dear John:

I enclose copies of: 1) an analysis of the Moynihan report, an article on jury trials, and a copy of the Fifth Circuit Ruling.

As I told you last night, I did not have a firm view of the procedure at this point, but I am inclined to recommend that we appeal the case on at least one or possibly two grounds. One of the important parts of the case which was rejected by the Fifth Circuit was our attempting to hold Judge Spencer as a defendant. This would be a tremendous victory for everyone if the Supreme Court would uphold our position. I can hardly think of a greater service to the civil rights movement than the Supreme Court saying that a local judge who acts on cohoots with the police could be liable for false arrest.

I also am considering recommending to you appealing on the other issue of whether we were not entitled to a direct verdict as a matter of law. Particularly on that part of our complaint that related to a violation of the old Civil Rights Act which was mainly Title 42 Section 1983. I hope to get back to you soon with the estimates of the expenses. The printing of the brief I can tell you would cost a minimum, in a case of this kind, of several hundred dollars. The printing of the record would not be necessary until the until the Supreme Court decided whether or not to hear our case, that is it would make a preliminary judgment as to whether we have an interesting issue to present to them. The expenses, travel, etc. at this stage should not go above $500, hopefully less. If the Supreme Court decides to hear the case I would think you would have an additional expense in excess of a little more than $1,000. The $500 figure is reasonably firm which would probably include the $100 filing fee, the printing of the brief and hopefully, not more than one trip to Washington for filing. I am prepared to recommend this to you rather firmly. The only question which is to be considered; is if we are granted the right to be heard by the Supreme Court then we of course must follow through on the additional expenses. It goes without saying that at this point I could not honestly tell you whether the court would support our position on the responsibility of judges but let me emphasize again I think it is worth the effort.

Let's have your next conference on your house boat on a bright sunny day.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

November 16, 1965

NOV 19 1965

Clerk
United States District Court
Jackson, Mississippi

Re: **No. 21325 - Robert L. Pierson, Et Al
- vs - J. L. Ray, Et Al
(Your No. 3315-Civil Action)**

Dear Sir:

Enclosed is a certified copy of the judgment of this Court in the above case, issued as and for the mandate, together with a copy of its opinion.

Incorporated on the judgment is a detailed statement of the costs in this Court, as follows:

Docketing cause, etc.	$ 25.00

Also enclosed is the record on appeal, Volumes I, II and III, in the above referenced cause.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Clara R. James
Chief Deputy Clerk

encs.
cc: **(Letter Only)**
Mr. L. H. Rosenthal
✓**Mr. Carl Rachlin**
Mr. Thomas H. Watkins,
and Miss Elizabeth W. Grayson
Mr. E. W. Stennett

LAW OFFICES
KOMINERS & FORT
TOWER BUILDING, 1401 K STREET, N. W.
WASHINGTON, D. C. 20005

ODELL KOMINERS
J. FRANKLIN FORT
JOHN CUNNINGHAM
ROBERT S. HOPE
MARK P. SCHLEFER
J. ALTON BOYER
HARRISON D. HUTSON
T. S. L. PERLMAN

EDWARD E. WRIGHT

TELEPHONE STERLING 3-7555
CABLE ADDRESS "MARLAW"

NOV 18 1965

COPY

November 17, 1965

Rev. John B. Morris
Executive Director
Episcopal Society for Cultural
and Racial Unity
5 Forsyth Street, N. W.
Atlanta, Georgia 30303

Dear Reverend Morris:

I have just seen the Fifth Circuit's decision in Pierson v. Ray. I believe the decision is in error on several grounds, and I hope you are planning an appeal to the Supreme Court.

Insofar as your claim under the Civil Rights statutes is concerned, which I take to be the principle aspect of the suit, if American citizens may not insist upon the enjoyment of constitutional rights when local police authorities have embarked on a policy of using State statutes to deny those rights, then there can be little substance to rights protected by the Constitution. Regardless of whether your possible arrest was within your contemplation at the time you went to Jackson, if your arrest was not illegal and a false arrest at the time, then Federal rights may be enjoyed only following prolonged litigation in State courts. I believe it important to reverse the Fifth Circuit's decision and hope you will persevere in your suit.

Since last seeing you, I have done considerable research in the area of recovering damages in Civil Rights actions, despite jury hostility, and have concluded that under Federal law a significant recovery is possible in your case regardless of jury attitudes in Jackson. When, or if, your case is returned to the District Court for trial, I would be happy to assist in the preparation for eventual retrial, to help lay the foundation needed for a court-rendered award.

With regards and best wishes from my wife and I,

Sincerely yours,

Edward E. Wright

cc: ✓ Carl Rachlin, Esquire

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 FORSYTH STREET, N. W. PHONE 525-7975 ATLANTA, GEORGIA 30303

Perm v.f.

COPY

November 19, 1965

Mr. Edward B. Wright
Kominers & Fort
Tower Building, 1401 K Street, N.W.
Washington, D.C. 20005

Dear Mr. Wright:

How nice to hear from you again. I remember so pleasantly our meeting you and your wife following the trial in our case in Jackson. It is good to know now that you are where there is a little more freedom and room to move around in.

I very much appreciate your thoughts on the ruling in our case and your offer to assist if we should follow through with an appeal to the Supreme Court. I have been thinking about this matter since Carl first told me of where things now stand, but I really haven't yet had an opportunity to talk with my fellow plaintiffs or to care--fully reflect on the opportunities and alternatives facing us.

I confess that I have an initial reluctance to appeal a verdict of the Fifth Circuit, for it is my impression as a layman in the field of law that the Supreme Court tends to rely rather heavily on rulings of the Fifth Circuit. I just wonder if they would overturn a ruling in a case such as ours, which has its unusual aspects.

Needless to say, I did think it was rather curious of the Fifth Circuit, in their ruling, to base so much of their decision on the question of whether or not we intended to be arrested. The fact of the matter is that we did go into the bus station fully cognizant of the possibility of being arrested, but it was our sincere and earnest hope that we not be arrested and, following a lunch that we hoped to have in the coffee shop, be allowed to continue on our journey. We were aware of the fact that everyone else in such circumstances had been arrested, but we had an itinerary and a purpose that lay beyond Jackson, so we were hoping that this might be the occasion when the local authorities would let the barriers down and let us eat and proceed on our way.

At any rate, I shall be in touch with our other folks on this matter and will stay in close touch with Carl Rachlin, and I know that he shares with me our appreciation for your offer of assistance.

Looking forward to seeing you on one of my next trips to Washington, and with all best wishes, I remain

Yours faithfully,

The Reverend John B. Morris
Executive Director

JBM/sat
cc: Mr. Carl Rachlin ✓
Enclosures

November 22, 1965

Edward E. Wright, Esq.
Kominars & Fort
1401 K Street, N.W.
Washington, D. C. 20004

Re: Pierson v. Ray

Dear Ed:

Thank you for the copy of your letter to John Morris. I have already recommended an appeal to the Supreme Court for the reason you refer to, but also for one more that I think at least equally important, namely, the dismissal of the complaint against Judge Spencer. To me this is the nub of the entire illegal arrest situation. The police would not be so free with their arrests if they did not know they would receive automatic convictions.

Our analysis of 1983 and its predecessors indicate that state judges were not free by virtue of their office.

I appreciate your kind offer and willbbe in touch with you. Because of the finances of E.S.C.R.U., unhappily all lawyers will work pro bono, but think of the later rewards.

My kindest wishes to your wife and child, (or is it children now?).

Sincerely yours,

CARL RACHLIN

CR/cc
cc Rev. John B. Morris, Executive Dir.

THE FOLLOWING DOCUMENTS ARE THE
BEST AVAILABLE.

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 FORSYTH STREET, N. W. PHONE 525-7575 ATLANTA, GEORGIA 30303

Please
Ken

COPY

December 6, 1965

Mr. William M. Kunstler
511 Fifth Avenue
New York, New York 10017

Dear Bill:

Thank you for your letter of November 29th concerning a possible civil damage action with reference to the death of Jonathan Daniels.

When Jack Minnis called me about this I told him that there had already been considerable discussion amongst various lawyers interested in such an action, and that Mr. John Upham of St. Louis was serving as one of several unofficial legal advisors for Mrs. Daniels. Mr. Upham is the father of the seminarian who was with Jon Daniels in Selma during last spring, and he has been down to Selma since Jon's death and we have remained in close touch on this matter. Actually, I believe that Dean Thoron of the Cornell Law School is the one who is more closely in touch with Mrs. Daniels, but Mr. Upham is the person with whom I have been discussing these issues, as well as with Chuck Morgan here and others.

Accordingly, as I told Jack, the best thing I can do is simply pass along your concern by way of sending a copy of your letter to these other interested parties. I feel that the primary initiative will have to come from Mr. Upham and Dean Thoren, although we certainly are interested in pursuing this matter and will be of whatever help we can.

Yours faithfully,

The Reverend John B. Morris
Executive Director

JBM/sat
cc: Mr. John Upham
Mr. Charles Morgan, Jr.
Mr. Carl Rachlin ✓

Pierson v Ray

December 6, 1965

Melvin L. Wulf, Esquire
Legal Department Director
American Civil Liberties Union
New York, N.Y.

Dear Mel:

As I mentioned to you on the telephone, Carl Rachlin, John Morris and I recently engaged in conversation concerning the case of Pierson vs. Ray. The question of funds always arises in matters of this nature and I forward to you a copy of the opinion in that case and a copy of correspondence between Carl, Ed Wright and John Morris.

You might let me have your thoughts on this so that I can advise Carl and John as to our interest in the case and what support we might be able to lend.

Kindest regards.

Sincerely,

Charles Morgan, Jr.

CM:rg
Enclosures

cc: ✓ Carl Rachlin, Esquire
CORE
38 Park Row
New York, N.Y. 10038

COPY

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 FORSYTH STREET, N. W. PHONE [illegible] ATLANTA, GEORGIA [illegible]

MEMORANDUM

TO: Jim Jones
Bob Pierson
Jim Breeden

December 7, 1965

FROM: John Morris

RE: 5th Circuit Ruling in our Case & Appeal to the Supreme Court

You may have heard, although there has been no news coverage on it, that the 5th Circuit "reversed and remanded" the decision in our case against Jackson police and municipal authorities. This was handed down October 25th and involves various errors the Court cites on the part of the Judge in District Court, etc.

However, their ruling has two aspects which Carl Rachlin thinks we should appeal to the Supreme Court:

1. They make pertinent whether or not we intended to be arrested or not, leaving the adjudication of this to have effect on any further consideration of the case or damages awarded;

2. They cause Judge Spencer to be excluded from the case in any further re-trial based on their order.

Enclosed is Carl's letter recommending that we appeal these points to the Surpeme Court. Also enclosed is a letter from [illegible] advocating the same. (You will recall he was formerly Judge [illegible] law clerk and we went to his home [illegible] for a drink following the trial in Federal Court in Jackson.)

I have also talked with Charles [illegible] the [illegible] office of the ACLU and he [illegible] the Supreme Court.

The alternatives are to drop [illegible] without any legal point proved [illegible] Court for further trials on the [illegible] further [illegible] to have more testing and [illegible] question of our intentions in Jackson [illegible] to be adjudicated.

I told Carl that the only barrier to appeal to the Supreme Court, or anywhere for that matter, was cost. We have [illegible] set aside for [illegible] we would have to pay [illegible] fully utilizing [illegible] that there will be no legal fees [illegible]

December 20, 1965

Rev. John B. Morris
Episcopal Society for Cultural
& Racial Unity
5 Forsyth Street, N.W.
Atlanta 3 Georgia

Re: Pierson v. Ray

Dear John:

Mel Wulf and I talked yesterday and the ACLU will defray the expenses for the proceeding to the U. S. Supreme Court. We are proceeding accordingly.

Will keep in touch.

Sincerely,

CARL RACHLIN
General Counsel

CR/es

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 FORSYTH STREET, N. W.   PHONE 525-7975   ATLANTA, GEORGIA 30303

DEC 22 1965

Pierson v. Ray

Memorandum

December 21, 1965

To: Jim Breeden, Jim Jones, Bob Pierson, Carl Rachlin, Chuck Morgan

From: John Morris

Re: An Appeal In Our Case To The Supreme Court

Thank you all for your communications in response to my last memorandum concerning the status of our case in Jackson. All three of my co-plaintiffs have consented to our taking our case on appeal to the Supreme Court.

I had already told Carl that I was quite confident that all would agree to this, and I assume that things are now in process for such an appeal.

Further news has just come in the form of a memorandum from Mel Wulf, director of the Legal Department of the ACLU, who reports that ACLU will cover the expenses on our appeal, with Carl doing the work. In other words, with this division of labor and money, it will be an ACLU - CORE venture.

Of course we plaintiffs remain as fully involved as ever, being the initiatory individuals in the whole situation. I think it is good, however, to have the close cooperation and assistance of these various groups and I know that we are all grateful to both Carl Rachlin, CORE and the ACLU for their interest in our case.

LAW OFFICES

[illegible] & [illegible]

TOWER BUILDING, 1401 [illegible] STREET, N. W.

WASHINGTON, D. C. [illegible]

[illegible], 19[illegible]

Reverend John [illegible]
5 Forsyth Street, N. W.
Atlanta, Georgia 30303

Dear Reverend [illegible]:

I judge from your letter of November 19 that you felt considerable uncertainty, at least at that time, over whether you should appeal the Fifth Circuit's decision in [illegible] v. [illegible]. I hope you have resolved your doubts in favor of an appeal, and in case you are still pondering the question, [illegible] comments on the Fifth Circuit's decision [illegible] abuse of police power against civil rights protestants in Mississippi; the original objective of the suit can only be furthered by an appeal; (3) the Court's decision, for various reasons, is in need of correction since passages or parts, if not reversed, will have a harmful effect upon other suits in Mississippi, and elsewhere, of a like nature involving both persons with and without foreknowledge that their arrests were likely.

To elaborate on item (3), at least these major portions of the opinion seem to me to be seriously in error and to have a widespread potential application.

1. In expanding and applying the doctrine of "volenti non fit injuria" (consent destroys a cause of action) to false arrest and false imprisonment suits where the protestants knew an arrest was likely at the time, protested, nevertheless, the Court cites no federal authority and it distorts state authorities which, on inspection, were related to very different circumstances. If the doctrine of consent is as broad as the Court holds, and is a matter [illegible] [illegible] [illegible], then it is very possible that [illegible] [illegible] [illegible] for false arrest and false [illegible] [illegible] [illegible] or threatened, to encourage lawful police conduct toward individuals, where such encouragement is most needed. These suits have not been used much in the civil rights [illegible] [illegible] [illegible] because individual grievances [illegible] [illegible] [illegible] [illegible] given priority, but I believe [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

2. [illegible]

those exercising a lawful right to use non-segregated interstate facilities, while not arresting other persons in the terminal who were, in fact, those having "congregated" "with intent to provoke a breach of the peace" within the meaning of the statute. Contrary to the Court's holding, there is no immunity in Mississippi, under Mississippi state law, for an officer who abuses his authority to make an arrest by an arbitrary interpretation of a criminal statute. The authorities cited by the Court are irrelevant.

3. The Court's dismissal of the State cause of action is therefore without foundation. While the survival of the civil rights cause of action is no doubt more important, the close interplay of State and Federal law in civil rights damage suits is such that an erroneous interpretation of State law of this magnitude requires correction lest it have unexpected consequences. Having correctly found that a mistrial occurred on introducing the Daily Worker article, that Judge Mize's instruction on probable cause is in need of some kind of (unspecified) revision, and having erroneously held that the State Police officers enjoy "immunity" from liability under State law (a holding unexplained even by the Court [illegible] the "good faith" of the officers was [illegible]), no warrant exists for the Court's dismissal of the State cause of action. Correcting these errors is important both for this and later cases.

4. Lastly, the Court's denial of a directed verdict on the issue of liability in the civil rights cause of action (and, probably, in the State cause of action also) based on evidence before the jury allegedly showing by testimony of some "[illegible]" [illegible] wrong both on public policy as previously indicated, and on the evidentiary facts. [illegible] shown by the evidence, in the [illegible] to [illegible]

would be arrested, if any was, with other members remaining free to post bond, carry on with the itinerary, etc. The facts established that those who went to the terminal lunchroom did not "consent" to be "arrested"; their consent was to be among the group exposed to the possibility of arrest and incarceration. For the sake of conserving legal expenses both in this suit and in others, it is important to secure a directed verdict now with appeal costs assessed against the defendants. Recovery of costs is in fact, at the moment, one of the few means of "discouraging" the defendants from similar conduct in other like instances.

Thank you for the material on Jonathan Daniels. His report from Selma just prior to his death was a very moving document to read.

With kindest regards and best wishes for the new year,

Sincerely,

Edward L. Wright

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
5 FORSYTH STREET, N. W. PHONE 525-7975 ATLANTA, GEORGIA 30303

COPY

Personally

January 4, 1966

Carl — I assume the transcript of the case arrived O.K. Let me know if there's more I can do. I'll be up there for a Board Meeting JAN 14-16 at "CHURCH ~~[illegible]~~ ARMY" Center in Brooklyn
John

Mr. Edward E. Wright
Kominers & Fort
Tower Building, 1401 K Street, N.W.
Washington, D.C. 20005

Dear Ed Wright:

Thank you so much for your thoughtful letter of December 30th concerning our case and reasons why you feel we should appeal the decision of the Fifth Circuit.

I am happy to tell you that we reached this conclusion several weeks ago and asked Carl Rachlin if he would proceed with the appeal. The American Civil Liberties Union will help on expenses in connection with the appeal, but Carl will retain the handling of the case for which we are very glad and grateful.

Actually, there was never any question in my mind as to whether it would be a moral thing or not for us to appeal, but I was only concerned with the expense of it and with the likelihood of winning a verdict in our favor. I am certain that it is right that we go ahead with this, regardless of the consequences, and I'm glad that we have taken this step.

Because your comments are so much to the point of why we are carrying through with this, I am taking the liberty of sending copies of your letter to my fellow plaintiffs, as well as to Carl Rachlin with whom I'm sure you have already had ample opportunity to discuss the whole case.

Whenever this comes up before the Supreme Court, I told Carl that I certainly hoped to come to Washington and at least be one bystander and observer in the appeal proceedings. I hope at that time that I will have the pleasure of seeing you again.

With appreciation for your interest in our case, and with all best wishes to you and your wife, I remain

Yours faithfully,

John Morris

The Reverend John B. Morris
Executive Director

JBM/sat
cc: The Rev. Robert Pierson
The Rev. James Jones
The Rev. James Breeden
Mr. Carl Rachlin ✓

Pierson v Ray

The Episcopal Society for Cultural and Racial Unity
ROOM 200, 5 FORSYTH STREET, N.W., ATLANTA 3, GEORGIA • JACKSON 5-7975

January 19, 1966

JAN 21 1966

Mr. Carl Rachlin
Congress on Racial Equality
38 Park Row
New York, New York 10038

Dear Carl:

Just a note to say that we had such a busy and intensive Board Meeting that I was weary at its conclusion on Sunday evening and came right on back to Atlanta as I had been scheduled to do. I'm sorry that I didn't get an opportunity to see you and hear something further about the situation you described on the telephone.

I hope that all goes well with our appeal to the Supreme Court. Let me know if there is anything I can do and, when you get some word as to when the case will be heard, let me know the dates and I shall certainly try to be there.

Yours faithfully,

The Reverend John B. Morris
Executive Director

JBM/sat

And I'm sorry I missed seeing the sunset from your new Apt.!

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

January 24, 1966

JAN 2 6 1966

Carl Rachlin, Esquire
38 Park Row
New York, New York

Re: Pierson, et al. v.
Ray, et al.

Dear Sir:

Your application for an extension of time within which to file a petition for certiorari was presented to Mr. Justice Black, who on January 21st signed an order extending your time to and including February 24, 1966.

A copy of Justice Black's order is enclosed and you should advise the Clerk of the U. S. Court of Appeals for the Fifth Circuit and your adversary of its entry.

Very truly yours,

John F. Davis, Clerk

By Edward C. Schade

E. C. Schade
Assistant

ECS:lsr

Enclosure

Copy

L. H. ROSENTHAL
ATTORNEY AND COUNSELLOR AT LAW
221 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI

353-8143
939-1645

January 28, 1966

FEB 1 1966

Hon. Carl Rachlin
38 Park Row
New York, New York

Re: Pierson, et al. vs. Ray, et al.

Dear Mr. Rachlin:

I desire very much to be included as one of the attorneys of record in this case before the Supreme Court and will appreciate it if you see to it that I am included as one of the attorneys.

Please find enclosed a letter to the clerk of the Fifth Circuit requesting him to certify the record. He is the proper person to do this (I spoke to him by telephone to verify the correctness of this and I spoke to the district clerk who said she had nothing to do with it).

Also find enclosed a motion and order for a stay pending our application as suggested by the clerk of the fifth circuit.

Also enclosed is a copy of a letter to Judge Russel requesting him to continue the case until such time as our application is disposed of by the Supreme Court.

With kindest regards, I am,

Yours truly,

L. H. Rosenthal

L. H. Rosenthal

LR/fr
Encl.

January 28, 1966

Judge Dan Russel
P. O. Box 511
Hattiesburg, Mississippi

RE: Robert L. Pierson, et al. vs. J. L. Ray, et al.,
Jackson Division no. 3315

Dear Judge Russel:

We are at this time attempting to obtain certiorari from the Supreme Court in the above styled and numbered cause of action. Enclosed you will find a motion which states what we have done in furtherance of filing the Petition for Writ of Certiorari.

I call this to your attention because your Jackson Division Docket has this case set to be tried on February 21, 1966, and in view of our motions pending in both the Supreme Court and in the Circuit Court I would like to respectfully request that this case be continued until such time as this case has been disposed of by the Supreme Court.

With thanks for your courtesy and consideration in this and in all other matters, I am,

Yours truly,

L. H. Rosenthal

LR/fr
Encl.

cc: Hon. Carl Rachlin

L. H. ROSENTHAL
ATTORNEY AND COUNSELLOR AT LAW
221 NORTH PRESIDENT STREET
JACKSON, MISSISSIPPI
353-8143 939-1645

January 28, 1966

U.S. COURT OF APPEALS
RECEIVED
JAN 31 1966
NEW ORLEANS, LA.

United States Court of Appeals
Fifth Circuit
Office of the Clerk
New Orleans, Louisiana

Re: Robert L. Pierson, et al. vs. J. L. Ray, et al., No. 21325

Dear Sir:

Please file the enclosed motion in the above styled and numbered cause of action and bring the same to the attention of the appropriate judge or judges. A proposed order is also enclosed.

With thanks for your courtesy and consideration in this matter, I am,

Yours truly,

L. H. Rosenthal

L. H. Rosenthal

LR/fr
Encl.

cc: Hon. Carl Rachlin

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NUMBER 21325

ROBERT L. PIERSON, ET AL. APPELLANTS

VS.

J. L. RAY, ET AL. APPELLEES

MOTION

Now comes the appellants, by their attorney of record, and moves the Court to enter an Order staying the mandate of this Court entered in this action on October 25, 1965 pending appellants' application to the Supreme Court of the United States for writ of certiorari, and in support of their motion would show unto the Court the following; to-wit:

That the appellants desires to request a writ of certiorari from the Supreme Court of the United States, and in furtherance of this desire has on January 16, 1966 filed with the Supreme Court of the United States an Application for Extension of Time in Which to File Petition for Writ of Certiorari, and has on this day, January 28, 1966 requested the Clerk of this Court to certify the record to the Supreme Court of the United States.

Respectfully submitted,

L. H. Rosenthal
L. H. ROSENTHAL,
Attorney for Appellants

CERTIFICATE

I hereby certify that a true copy of the foregoing motion has been forwarded by United States mail, postage prepaid, to Hon. Thomas H. Watkins, 800 Plaza Building, Jackson, Mississippi, Attorney of Record for the Appellees.

This the 28th day of January, 1966.

L. H. Rosenthal

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NUMBER 21325

ROBERT L. PIERSON, ET AL.	APPELLANTS
VS.	
J. L. RAY, ET AL.	APPELLEES

ORDER

This cause came on to be heard on the motion of the appellants requesting an order staying the mandate of this court entered in this action on October 25, 1965 pending appellants' application to the Supreme Court of the United States for writ of certiorari, and the Court finding that the motion should be granted;

THEREFORE, ORDERS that the mandate of this Court entered in this action on October 25, 1965 be stayed pending appellants' application to the Supreme Court of the United States for writ of certiorari.

ORDERED, this the ____ day of _______________, 1966.

JUDGE OF THE CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT

January 31, 1966

L. H. Rosenthal, Esq.
406 West Capitol Street
Jackson, Mississippi

RE: Pierson v. Ray

Dear Leonard:

The Supreme Court has just extended our time to file a Petition for Certiorari in Pierson v. Ray until February 24. Are you having any trouble getting the record certified by the Clerk? If you are, please let us know and we will see what we can do. Whatever charges there are have Mrs. Wharton send them directly to me and we will take care of them.

I have not been in Jackson for several months and liik forward to seeing you in the near future. Regards to your family.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: F.A. O. Schwarz, Esq.
Melvin Wulf, Esq.

Presson v. Kay

February 3, 1966

F. A. O. Schwarz, Esq.
Cravath, Swain & Moore, Esqs.
1 Chase Manhattan Plaza
New York, New York

Dear Fritz:

In reading United States Law Week, January 25, 1966 I notice the case of Jobson v. Henne, p.2382 which concerns itself with persons who were or were not excluded from the coverage of the early civil rights acts. This case does not refer to a judge but it does have some bearing on our problem.

I look forward to seeing you soon.

Sincerely,

CR/cs

CARL RACHLIN

BOSTON UNIVERSITY LAW REVIEW
765 COMMONWEALTH AVENUE
BOSTON, MASSACHUSETTS 02215
TEL. COPLEY 7-2100

FEB 10 1966

February 9, 1966

Carl Rachlin, Esq.
38 Park Row
New York City, New York

Dear Mr. Rachlin:

We are planning a Case Comment on Pierson v. Ray, 352 F.2d 213. It would be of great aid to our research if you would consent to a loan of a copy of your brief, and if possible, that of the opposing party. We shall return them upon completion of the Comment.

We would appreciate also your letting us know whether further proceedings are expected.

Thank you for any assistance you could give us.

Very truly yours,

William Revis

William Revis
Boston University Law Review
Junior Editor

WR/s

Dear Mr Revis
This is going to the U.S. Supreme Court - this week for certiorari. We can lend you a copy of our petition in a few days
v t y
CR

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

February 11, 1966

FEB 14 1966

Mr. L. H. Rosenthal
Attorney at Law
221 North President St.
Jackson, Mississippi

RE: No. 21325 - Robert L. Pierson,
Et Al - vs - J. L. Ray, Et Al

Dear Sir:

Pursuant to your motion in the referenced cause for a recall and stay of the mandate, the Court has this date entered an order recalling and staying its mandate to and including March 1, 1966. Enclosed is a copy of the order as entered.

By copy of this letter, I am forwarding a copy of the order to the Clerk of the District Court in Jackson, Mississippi, and requesting him to return the judgment issued as and for the mandate on November 16, 1965.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By G. F. Ganucheau
G. F. Ganucheau
Chief Deputy Clerk

/je
Encl.
cc: Clerk, U. S. District Court, Jackson, Miss.
Mr. Carl Rachlin
Mr. Thomas H. Watkins,
and Miss Elizabeth W. Grayson
Mr. E. V. Stennett

February 15, 1966

Mr. William Revis
Junior Editor
Boston University Law Review
765 Commonwealth Avenue
Boston, Massachusetts 02215

RE: Pierson v. Ray

Dear Mr. Revis:

In reference to your letter of February 9, the above named case is going to the United States Supreme Court this week for certiorari. We can lend you a copy of our petition in a few days.

Very truly yours,

CARL RACHLIN
General Counsel

CR/cs

per. copy

February 16, 1966

Carl Rachlin, Esq.
c/o Ruth Jacobs, Esq.
1255 Post Street
San Francisco, California

Dear Carl:

Here is the typed brief which I received from Fritz Schwarz. Fritz considers this a first draft. He plans to work on a final draft this coming weekend; to go over it with you on Monday morning and to send it to the printer Monday afternoon for instant printing. He is completely unable to work on the case again until this weekend. I do not think his suggestion is quite satisfactory, from the standpoint of time, and therefore, I suggest that we do what we can with this draft now. You know how vital it is that we get this thing in final form as soon as possible.

Enclosed also please find a clipping from the New York Times entitled"Toward Better Teaching in Slums". It suggests the response which we can expect to our suit against the Board of Education. In my opinion, and I am sure in yours, the solution which it appears they are planning to propose is completely unsatisfactory. It appears from the article that Hechinger thinks so too. It appears, therefore, that we are going to have a fight on our hands after all.

When will you be back in New York? I am anxiously awaiting to hear from you.

Sincerely,

SMN/cs
Enc.

STEPHEN M. NAGLER

P.S. Harris David finally made a motion to consolidate the Louisiana school cases. I have written to him asking him to let me know the disposition of the motion as soon as possible.

Copy of note from F.A. Schwarz to S. Nagler
February 16, 1966

Steve:

Herewith two copies of the second and third sections of the reasons for granting the writ section of the petition.

The first section, dealing with the immunity of the police justice will arrive tomorrow.

What are your views and Carl's of having the present second section come first? It is a more appealing and simple, argument than the one on police justice. The disadvantage of putting it first is that, unlike the other two issues, it raises a question where there is not a final judgment.

Frtiz Schwarz

February 23, 1966
(Dictated February 18, 1966)

Mr. Harold L. White
6339 - 14th
Detroit 8, Michigan

Dear Mr. White:

Thank you for your letter of January 24, 1966.

The ACLU in conjunction with CORE Attorney Carl Rachlin is appealing a recent Fifth Circuit decision in the case of Pierson v. Ray which involved the reversal of the United States District Court for the Southern District of Mississippi. Pierson (Nelson Rockefeller's son-in-law) and other Episcopal ministers were arrested in Jackson and confined. Suit was brought against the local judge and other officials for damages. Verdict (before an all white jury) for defendants. The Fifth Circuit reversed as to all defendants save the judge affirming as to him. The judicial immunity doctrine is, of course, more pronounced in the South than in the North. But, unfortunately the doctrine persists.

I am sending the documents you mailed to me to Carl Rachlin at the National Headquarters of CORE. You might advise him as to whether or not you applied for a motion for extension of time on motion for rehearing in the Supreme Court. I have no thoughts on what move you can do, but perhaps Carl will.

Thank you for the kindness of the remarks in your letter.

Good luck.

Sincerely,

Charles Morgan, Jr.

CM:jsr

cc: Carl Rachlin, Esquire
CORE
38 Park Row
New York, New York

Enclosure

FEB 25 1966

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

February 24, 1966

Hon. John F. Davis
Clerk
Supreme Court of the U. S.
Washington, D. C.

RE: No. 21325 - Robert L. Pierson,
Et Al - vs - J. L. Ray, Et Al.

Dear Mr. Davis:

At the request of counsel for appellants, enclosed is volume I of the four volume record to be filed in your Court in connection with appellants' petition for writ of certiorari. The additional copies of the record will be forwarded to you by counsel for appellants.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By G.F. Ganucheau
G. F. Ganucheau
Chief Deputy Clerk

/je
Encl.

cc: Mr. Carl Rachlin

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

February 28, 1966

MAR 2 1966

Carl Rachlin, Esquire
38 Park Row
New York, N. Y.

Re: Pierson, et al. v. Ray, et al.

Dear Sir:

Your application for a further extension of time within which to file a petition for certiorari was presented to Mr. Justice Black, who on February 24th signed an order extending your time to and including February 28, 1966.

A copy of Justice Black's order is enclosed and you should advise the Clerk of the U. S. Court of Appeals for the Fifth Circuit and your adversary of its entry.

Very truly yours,

John F. Davis, Clerk

By Edward C. Schade

E. C. Schade
Assistant

ECS:lsr

Enclosure

Supreme Court of the United States

No. -----------, *October Term,* 1965

ROBERT L. PIERSON, ET AL.,

Petitioners,

vs

J. L. RAY, ET AL

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby/further extended to and including

February 28th, 1966

/s/ Hugo L. Black
Associate Justice of the Supreme Court of the United States

Dated this 24th

day of February, 1966

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

March 1, 1966

MAR 8 1966

Carl Rachlin, Esq.
38 Park Row
New York, N. Y. 10038

RE: PIERSON, ET AL. v. RAY, ET AL.
No. 1074, October Term, 1965

Dear Mr. Rachlin:

The petition for a writ of certiorari in the above-entitled case was docketed in this Court on February 28, 1966, as No. 1074, October Term, 1965.

Kindly complete both sides of the enclosed form for the entry of your appearance and return it to this office.

Also enclosed is a form for notifying opposing counsel that the case was docketed. Proof of service of this notification is not necessary.

Very truly yours,

JOHN F. DAVIS, Clerk

By Jennie H. Lazowski

(Miss) Jennie H. Lazowski
Assistant

jmh
Enclosures

sent 3/3/66

TO

Hon. Carl Rachlin
38 Park Row
New York, New York

FEB 8 1966

FROM

L. H. Rosenthal

SUBJECT
Pierson, et al. vs. Ray, et al

DATE
1-3-66

MESSAGE:

– Enclosed please find a letter and certain other papers I redeived toda
from the clerk of the fifth circuit.

I do not know what you want me to get certified by the district clerk. Both Mr. Windhorst and the district clerk says that the ~~xxxxxx~~ record which ~~xxx~~ is to be certified according to Rule 21 of the Rules of the Supreme Court is the record in the circuit court, and Mr. Windhorst states ~~it~~,

ORIGINATOR-DO NOT WRITE BELOW THIS LINE REPLY TO ⟶ SIGNED

REPLY

in his letter which is enclosed, that he has done this.

Find enclosed also a motion to recall and stay the mandate which I have this day sent the clerk of the circuit court.

DATE

SIGNED

SEND PARTS 1 AND 3 INTACT-PART 1 WILL BE RETURNED WITH REPLY

37

RETURN TO ORIGINATOR

[illegible] acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By
Richard E. Windhorst, Jr.
Deputy Clerk

cc: Mr. Thomas H. Watkins
[illegible]
[illegible]

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

February 1, 1966

Mr. L. H. Rosenthal
Attorney at Law
221 North PresidentSt.
Jackson, Mississippi

RE: No. 21325 - Robert L. Pierson, Et Al
- vs - J. L. Ray, Et Al

Dear Sir:

In accordance with our telephone conversation of yesterday, I return herewith your Motion for Stay of Mandate in the above case, with the understanding that you are to file with this Office, a Motion to Recall and Stay the Mandate.

Find enclosed, a copy of the Opinion and Judgment which should be printed as an appendix to your petition for writ of certiorari, as provided by the rules of the Supreme Court. Under separate cover, in one package, I am forwarding the certified record in this cause for your use in the Supreme Court of the United States. Should any additional papers be needed, they can be certified as a supplemental record.

A statement in the amount of $3.05 is enclosed to cover the cost of certifying the proceedings, which I ask that you please remit.

Kindly acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Richard E Windhorst
Richard E. Windhorst, Jr.
Deputy Clerk

/je
Encls.
cc: Mr. Thomas H. Watkins
Mr. E. W. Stennett
Miss Elizabeth W. Grayson

FOUNDED 1920/INCORPORATED

AMERICAN CIVIL LIBERTIES UNION aclu

156 FIFTH AVENUE / NEW YORK / NEW YORK 10010 / ORegon 5-5990

Chairman, ERNEST ANGELL; Vice Chairmen, DOROTHY KENYON, WALTER MILLIS, DAN LACY; General Counsel, EDWARD J. ENNIS, OSMOND K. FRAENKEL; Secretary, GEORGE SOLL; Treasurer, SOPHIA YARNALL JACOBS.

Executive Director, JOHN DE J. PEMBERTON, JR.; Associate Director, ALAN REITMAN; Legal Department, Director, MELVIN L. WULF, Assistant Director, ELEANOR H. NORTON; Development Department Director, GORDON K. HASKELL, Assistant Director, THEODORE MOTE, Field Development Officer, J. ROBERT HANSON; International Work Adviser, ROGER N. BALDWIN; Administrative Assistant, LOUISE C. FLOYD, Executive Assistant, ANNE H. STRICKLAND; Staff Associates, JUDITH FOLLMAN, SUSAN GOLDSTEIN.

MAY 9 1966

May 6, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Dear Carl:

I see that there is a cross-petition for certiorari filed in Pierson v. Ray. Do you have a copy of it for me?

Sincerely yours,

Melvin L. Wulf
Legal Director

Washington Office: 1424 Sixteenth Street, N.W., Washington, D.C. 20036; Lawrence Speiser, Director; Mary O'Melveny, Executive Assistant
Southern Regional Office: 5 Forsyth St., N.W., Atlanta, Ga. 30303; Charles M. Morgan, Jr., Director
With organized affiliates in 34 states and 800 cooperating attorneys in 50 states.

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

W. P. MARSHALL
CHAIRMAN OF THE BOARD

TELEGRAM

R. W. McFALL
PRESIDENT

SYMBOLS
DL=Day Letter
NL=Night Letter
LT=International Letter Telegram

75-A NEW [illegible]

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

1966 MAY 16 PM 5 30

UJA052 (29)(55)CTA303
WK241 WW NFA135 PD NF WASHINGTON DC 16 1207P EDT

CARL RACHLIN
38 PRAK ROW NYK

PETITIONS FOR CERTIORARI PIERSON AND RAY CASES GRANTED TODAY.
CASES ONCSOLIDATED LETTER FOLLOWS
JOHN F DAVIS CLERL
(45)

MAY 17 [illegible]

SF1201(R2-65)

MAY 17 1966

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

May 16, 1966

RE: PIERSON, ET AL. v. RAY, ET AL., No. 1074;
RAY, ET AL. v. PIERSON, ET AL., No. 1155;
OCT. TERM, 1965

Dear Sir:

The Court today entered the following order in the above-entitled cases:

> The petitions for writs of certiorari are granted. The cases are consolidated and placed on the summary calendar.

Kindly advise your associates.

Very truly yours,

JOHN F. DAVIS, Clerk
By
Assistant

Carl Rachlin, Esq.
38 Park Row
New York, N.Y. 10038

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

May 16, 1966

RE: PIERSON, ET AL. v. RAY, ET AL., No. 1074;
RAY, ET AL. v. PIERSON, ET AL., No. 1155;
OCT. TERM, 1965

Dear Sir:

This is to advise you, as provided by Rule 41, that the above-entitled cases will not be reached for argument until next term, and accordingly, petitioner's (appellant's) brief will not be due until next August 25th, or thirty days after receipt of the printed record, whichever date is later.

Very truly yours,

JOHN F. DAVIS, Clerk
By E. T. Lyddane
Assistant

Carl Rachlin, Esq.
38 Park Row
New York, N.Y. 10038

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

MAY 18 1966

May 17, 1966

Carl Rachlin, Esq.
38 Park Row
New York, N.Y. 10038

RE: PIERSON, ET AL. v. RAY, ET AL., No.1074; RAY, ET AL. v. PIERSON, ET AL., No. 1155; OCT. TERM, 1965

Dear Mr. Rachlin:

Supplementing my letter of May 16, you are advised that the above-entitled cases have a total of one hour for argument, in other words, one-half hour for each side. This information is merely to clarify my letter of yesterday.

Very truly yours,

JOHN F. DAVIS, Clerk
By

E. P. Cullinan
Chief Deputy.

EPC:ht

May 20, 1966

Hon. John F. Davis
Clerk,
Supreme Court of U. S.
Washington, D. C. 20543

Re: Pierson, et al. v.
Ray, et al., No. 1074;
Ray, et al. v. Pierson,
et al., No. 1155;
Oct. Term, 1965

Dear Mr. Davis:

Thank you very much for your letters of May 16th and May 17th advising us of the granting of writs of certiorari, the consolidation of the cases and the amount of time allocated for argument.

We wish to designate the entire record for printing.

Very truly yours,

Carl Rachlin
General Counsel

CR:tp

cc: Thomas H. Watkins

May 20, 1966

Hon. John F. Davis
Clark,
Supreme Court of U. S.
Washington, D. C. 20543

Re: Pierson, et al. v.
Ray, et al., No. 1074;
Ray, et al. v. Pierson,
et al., No. 1155;
Oct. Term, 1965

Dear Mr. Davis:

Thank you very much for your letters of May 16th and May 17th advising us of the granting of writs of certiorari, the consolidation of the cases and the amount of time allocated for argument.

We wish to designate the entire record for printing.

Very truly yours,

Carl Rachlin
General Counsel

CR:tp

cc: Thomas H. Watkins

WATKINS & EAGER
ATTORNEYS AND COUNSELORS AT LAW
800 BANKERS TRUST PLAZA BUILDING
JACKSON, MISSISSIPPI 39205

WILLIAM H. WATKINS
1895-1959

PAT H. EAGER, JR.
THOMAS H. WATKINS
ELIZABETH HULEN
WM. E. SUDDATH, JR.
SHELBY R. ROGERS
WM. F. GOODMAN, JR.
JAMES A. BECKER, JR.

JOE W. HOBBS
H. H. WHITWORTH
W. THAD COCHRAN

P. O. BOX 650
AREA CODE 601
353-2711
353-7218

May 31, 1966

Mr. John F. Davis, Clerk
Supreme Court of the United States
Supreme Court Building
Washington, D.C. 20543

In re: Pierson, et al v. Ray
No. 1074

Ray, et al v. Pierson
No. 1155

October Term, 1965

Attention: Mr. Cullinan

Dear Mr. Cullinan:

You recall that you were kind enough to call me with reference to this matter on one occasion and suggested that if I needed any information with reference to the Rules of the Supreme Court that I could call on you.

You will recall that Robert L. Pierson, et al filed a Petition for a Writ of Certiorari which was numbered 1074.

Whereupon J. L. Ray, et al filed a "Respondent's Opposition to Petition for Writ of Certiorari and Alternative Cross-Petition". This you stated would have to be docketed and it has apparently been docketed as No. 1155.

I need clarification as to the Rules of the Court. Under our State practice No. 1155 would be a pure cross-appeal. The Appellee and Cross-Appellant would file no brief until the Appellant and Cross-Appellee's brief was filed. The Appellant and Cross-Appellee would have the full responsibility of the record. The Appellant and Cross-Appellee would file an original brief and then a reply brief, while the Appellee and Cross-Appellant would only file one brief.

I am assuming that counsel for Cause No. 1074 would file the record. What I need clarification on is the letter from your office of May 16th, 1966, to the effect that: "Petitioner's (Appellant's) brief will not be due until next August 25th, or thirty days after receipt of the printed record, whichever date is later." I note that the singular "Appellant's" is used, but I wish to confirm the fact that Pierson, et al, will file the first brief and that Ray, et al, will not file any original brief but merely a reply brief and that then Pierson, et al, will file the final reply brief. I am somewhat confused by the fact that it is set up as two consolidated cases.

Thanking you, I am

Sincerely yours,

WATKINS & EAGER

EWG/jhw

By____________________________
Elizabeth Watkins Hulen Grayson

cc: Carl Rachlin
No. 38 Park Row
New York, N. Y. 10038

Melvin Wulf
No. 156 Fifth Avenue
New York, N. Y.

Attorneys of record for Robert L. Pierson, et al

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

June 3, 1966

Mrs. Elizabeth W. H. Grayson
Attorney at Law
800 Bankers Trust Plaza Building
Jackson, Mississippi 39205

Re: Pierson, et al. v. Ray, et al.
No. 1074, O. T. 1965

Dear Mrs. Grayson:

Replying to your letter of May 31st, you are advised that under Rule 26 the petitioner in the above-entitled case should now file a designation of parts of the record to be printed and you will be accorded ten days or thereafter to file a cross designation. The record will then be printed and copies forwarded to each side.

The matter of filing the briefs on cross petitions for certiorari is troublesome and any arrangement that you may work out with your adversary so that the briefs may be filed and printed will be satisfactory with this office. This might be accomplished by the exchanging of typewritten copies of the briefs between the parties prior to the final printing.

Very truly yours,

John F. Davis, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:lsr

WATKINS & EAGER
ATTORNEYS AND COUNSELORS AT LAW
800 BANKERS TRUST PLAZA BUILDING
JACKSON, MISSISSIPPI 39205

WILLIAM H. WATKINS
1895-1959

PAT H. EAGER, JR.
THOMAS H. WATKINS
ELIZABETH HULEN
WM. E. SUDDATH, JR.
SHELBY R. ROGERS
WM. F. GOODMAN, JR.
JAMES A. BECKER, JR.

JOE W. HOBBS
H. H. WHITWORTH
W. THAD COCHRAN

P. O. BOX 650
AREA CODE 601
353-2711
353-7216

June 6, 1966

JUN 7 1966

Mr. Carl Rachlin
No. 38 Park Row
New York, N. Y. 10038

Mr. Melvin Wulf
No. 156 Fifth Avenue
New York, N. Y.

In re: Pierson, et al v. Ray, et al
United States Supreme Court
No. 1074, October Term 1965

Gentlemen:

We forwarded you copy of our letter to the Chief Deputy Clerk of the Supreme Court of May 31, 1966. We enclose herein copy of his reply which was received this morning.

According to this letter you should have within twenty (20) days after May 16th designated the part of the record that was to be printed. Twenty days has technically expired, but we will make no point of it. I trust that we will receive this designation in a short time. I would appreciate your forwarding it directly to the undersigned.

I suggest that we handle this by you filing an original brief prior to August 25th, if that date is later than thirty (30) days after the receipt of the printed record. I then suggest that we file merely one brief which would be a reply brief and our brief on cross-appeal, which would be filed within thirty (30) days after receipt of your brief. You would then have the right to file a reply brief. In other words, I think it would be better than each of us trying to file an original brief and each of us filing a reply brief, which would make four briefs.

Please let me know as soon as possible whether this is agreeable to you.

Sincerely yours,

WATKINS & EAGER

EH/jhw

By Elizabeth Hulen Grayson
Elizabeth Hulen Grayson

June 7, 1966

Mrs. Elizabeth Hulen Grayson, Esq.
c/o Watkins & Eager, Esqs.
800 Bankers Trust Plaza Building
Jackson, Mississippi 39205

Dear Mrs. Grayson:

I have your letter of June 6th. I enclose a copy of designation of record which I had thought had been filed, on our part, some two weeks ago. I assume the designation will be satisfactory to you since we designate the entire record. As to your suggestion that we file a brief on the entire matter no later than August 25th and that you file a reply brief on all issues within thirty days of receipt of our brief and that we have a further right to submit a response thereafter. Let me say that this proposal is agreeable to us and that I have sent a copy of this to Mr. Davis, Clerk of the Supreme Court so indicating.

Sincerely yours,

Carl Rachlin
General Counsel

CR/tp
Encl.
cc: John F. Davis
Melvin Wulf

JUL 1 1966

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

June 30, 1966

Carl Rachlin, Esq.
38 Park Row
New York, N.Y. 10038

RE: PIERSON, ET AL. v. RAY, ET AL.,
No. 1074, Oct. Term, 1965--
Now No. 79, Oct. Term, 1966

Dear Mr. Rachlin:

Based upon the designation of the parts of the record to be printed in the above case, it is estimated that a further deposit of $3,100 will be required to print the record and to cover the additional docketing fee of $50.00. This amount should be deposited immediately.

Very truly yours,

JOHN F. DAVIS, Clerk
By
E. P. Cullinan,
Chief Deputy.

EPC:ht

Pierson v. Ray

JUL 6 1966

July 5, 1966

Carl Rachlin, Esq.
National C.O.R.E.
38 Park Row
New York, N. Y.

Dear Mr. Rachlin:

I appreciated the opportunity to examine the papers on appeal in Piersom v. Ray. However, since the original pleadings in the U. S. D.C. were not included, I still remain in the dark as to the theory of action against the police judge. I assume that the theory is that he was an abettor of false arrest-imprisonment commenced by the police officers, such arrest being false because commenced without probable cause, and commenced to punish for discriminatory purposes. Can you advise me where I may obtain a copy of the original complaint brought in the U.S.D.C., and a copy of the minutes on trial in that court ?

I trust you will find my review of the judicial immunity issue in Lawrence v. Levy of some use. As you can see, my basic thesis is that it was made unmistakably clear in the enactment of the 1866 Civil Rights Acts that state judges of all description were rendered liable under the 1866 enactment, and that therefore, when the 1871 used identical language to define the class of person subject to liability, it necessarily included state judges among the liable.

The journals of Select Committee of 15, 1866, that framed the first civil rights act, and the 14th Amendment, and of the Committee on Southern Disorders of the Senate, of 1871, as well as journals of the House and Senate Judiciary Committeees in 1870 and 1871 should be fertile fields for further documentation. Such journals, if they all exist, are in the National Archives of the Library of Congress.

Please call on me if you wish some law clerking work in research, etc., done in matters respecting judicial immunity. I shall drop by the C.O.R.E. office on about July 20th to pick up the memo left for you in Lawrence v. Levy.

Sincerely yours,

John m Lawrence

John m. Lawrence
57 West 10 St. (Apt. 3-c)
New York 11, N. Y.
Tel.: GR 7-1826

FOUNDED 1920/INCORPORATED

AMERICAN CIVIL LIBERTIES UNION aclu

156 FIFTH AVENUE / NEW YORK / NEW YORK 10010 / ORegon 5-5990

Chairman, ERNEST ANGELL; Vice Chairmen, DOROTHY KENYON, WALTER MILLIS, DAN LACY; General Counsel, EDWARD J. ENNIS, OSMOND K. FRAENKEL; Secretary, GEORGE SOLL; Treasurer, SOPHIA YARNALL JACOBS.

Executive Director, JOHN DE J. PEMBERTON, JR.; Associate Director, ALAN REITMAN; Legal Department, Director, MELVIN L. WULF, Assistant Director, ELEANOR H. NORTON; Development Department Director, GORDON K. HASKELL, Assistant Director, THEODORE MOTE, Field Development Officer, J. ROBERT HANSON; International Work Adviser, ROGER N. BALDWIN; Administrative Assistant, LOUISE C. FLOYD, Executive Assistant, ANNE H. STRICKLAND; Staff Associates, JUDITH FOLLMAN, SUSAN GOLDSTEIN.

JUL 13 1966

July 12, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Dear Carl:

The enclosed speaks for itself.

How's Pierson coming?

Sincerely yours,

Melvin L. Wulf

Enc.

TO: Norman C. Amaker, Henry M. Aronson, Alvin J. Bronstein, Leroy D. Clark, Nils Douglas, Jack Greenberg, Charles Jones, Jr., Arthur Kinoy, William M. Kunstler, Howard Moore, Jr., Steve Ralston, Denison Ray, Henry Schwarzschild, Tobias Simon, Melvin Wulf, Melvyn Zarr

FROM: Tony Amsterdam

RE: Horror stories about prosecutors

DATE: July 6, 1966

Dear Gentlemen:

I ask your assistance, if you have a few minutes.

The Court of Appeals for the Third Circuit, in a case titled Bauers v. Heisel, 3d Cir. No. 15277, decided en banc May 19, 1966, has just overruled its decision in Picking v. Pennsylvania RR, 151 F.2d 240 (1945). Picking had held that a j.p. did not have judicial immunity in a suit for damages under the civil rights act, present 42 U.S.C. § 1983 (1964). Bauers not only allows judicial immunity, but allows prosecutorial immunity: specifically, it holds that a complaint alleging that a prosecutor wilfully prosecuted plaintiff as an adult, knowing that he was a juvenile within the exclusive jurisdiction of the juvenile court, was properly dismissed on the face of the complaint, by reason of prosecutorial immunity.

I am taking cert on behalf of Bauers. I think that it will make the cert petition more attractive (and help persuade the Court on the merits) if I can include in the document a series of examples of gross prosecutorial abuse of civil rights. I am looking for cases -- reflected in judicial opinions, in the general literature of the civil rights movement or of civil rights lawyering, or in litigation records (with the case identified by court, number, date and present posture) -- which I can use for this sort of example. I ask you all to pick your memories and/or files -- insofar as you conveniently can -- and to send me what you remember or find. Obviously, cases in which prosecutors wilfully brought proceedings in the wrong court (i.e., prosecuted adults as juveniles to deprive them of bail, or juveniles as adults to get them confined in a jail or the state prison in lieu of a juvenile facility) would be closest to Bauers and therefore most helpful; but I'll take any really abusive stuff. I am very grateful.

Carl Rachlin and Mel Wulf have already had cert granted on the question of judicial immunity of a Mississippi police justice under § 1983 in Pierson v. Ray, 352 F.2d 213 (5th Cir. 1965). It may be convenient, while you are compiling prosecutorial horror stories for me, to compile j.p. horror stories and send them on to Mel Wulf. I have not had time to discuss this with him yet, but if he is of my manner of thinking, he will want to grace his Pierson brief with such tales.

Many thanks! I know I impose on overburdened men, but the matter is important and I shall be appreciative a-plenty.

As ever,

Tony

cc: Stan Sloss

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

July 13, 1966

JUL 14 1966

Carl Rachlin, Esquire
38 Park Row
New York, New York 10038

RE: PIERSON, ET AL v. RAY, ET AL
Now No. 79, October Term, 1966
(Formerly No. 1074, O. T. 1965)

Dear Mr. Rachlin:

Based upon the designation of the parts of the record to be printed in the above case, it is estimated that a further deposit of $3,100 will be required to print the record and to cover the additional docketing fee of $50. This amount should be deposited immediately.

Very truly yours,

JOHN F. DAVIS, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:mk

Pierson v Ray

AUG 8 1966

August 7, 1966

To: Carl Rachlin, Esq.
Natl. C.O.R.E

Re: Pierson v. Ray

I direct your attention to the matters stated in GEORGIA V. RACHEL, 16 L. ED. 2d 925, at pp. 932 (col. 2) and 939, and GREENWOOD V. PEACOCK, 16 L. ED. 2d 944, 957 (col. 1), in their relation to matters that are pertinent to the judicial immunity issue in Pierson v. Ray.

As to RACHEL: You will note that legislative history is employed to allege the intendment of the langusge in the 1875 codification of the Removal statute. In this report of the legislative history the majority overlooks the fact that the Act of 1871, (now T. 42, Sec. 1981, et. seq., U. S.C.) is amendatory of the provisions in Sec. 3 of the Civil Rights Act of 1866, expanding the available procedures for redress of civil rights, and broadening the class of discriminatory acts which are remediable in civil litigation under the civil rights acts. As the Journal of the Senate Committee on Southern Disorders, revealed by Sen. Edmonds, chairman of the Senate Judiciary Committee, in hearings on the San Mateo Tax Case, (see reference in THE RAILROAD TAX CASES, 18 FED 385, 397), one certain intent of the 1871 Act was to accord other than racial grounds opportunity for being used to show discrimination. Such is in accord with the intendment of the Fourteenth Amendment itself. Justice Stewart's opinion here purporting that Removal cases are only sufficiently alleged where facts establish the racial nature of the discriminatory acts, because the 1875 Act admits only of such class of claims as warranting removal, is based upon excission of the history showing that any legally cognizable discrimination, congnizble that is as unfair discrimination, may be ground for having a removal. As the Julian Bond case shows, it is becoming increasingly difficult to obtain express proof that a ciscriminatory act done to a minrity group person is done on racial basis. Where sophisticatedd means are employed to perfect racial discrimination, as widely done in the North, the overt proof only show a deprivation of a substantial Federal right without direct proof of the racist intent. If, in Pierson v. Ray, a holding is allowed which accords relief only where racial grounds are claimed and proven, then such a holding will only be an engine to persuade the racist to use the more sophisticated, general civil rights deprivation means, to perfect racial discrimination.

As to PEACOCK, Justice Stewart writes that "The civil rights removal statute does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial,Compare this with the allusion to the availability of "civil sanctions" under T. 42, Sec. 1983. at p. 958, 16 L. ED. 2d.

J.M. Lawrence

AUG 10 1966

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

August 9, 1966

Carl Rachlin, Esquire
38 Park Row
New York, New York 10038

RE: PIERSON, ET AL v. RAY, ET AL
No. 79, October Term, 1966

Dear Mr. Rachlin:

On July 13th I wrote you requesting a deposit of $3,[illegible]00 representing the printing fee in the above-entitled case.

I have had no word from you in this connection, and this matter should be given your immediate attention inasmuch as this record is ready to go to the printer.

Very truly yours,

JOHN F. DAVIS, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:mk

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

August 18, 1966

Carl Rachlin, Esquire
General Counsel of CORE
150 Nassau Street
New York, New York 10038

RE: PIERSON, ET AL v. RAY, ET AL
Now No. 79, October Term, 1966
(Formerly No. 1074, O. T. 1965)

Dear Mr. Rachlin:

Receipt is acknowledged of your checks in the amount of $3,100 to cover the estimated cost of printing the record in the above-entitled case.

Very truly yours,

JOHN F. DAVIS, Clerk

By Edward Faircloth
Edward H. Faircloth
Assistant

EHF:mk

Pierson v Ray

WATKINS & EAGER
ATTORNEYS AND COUNSELORS AT LAW
800 BANKERS TRUST PLAZA BUILDING
JACKSON, MISSISSIPPI 39205

WILLIAM H. WATKINS
1895-1959

PAT H. EAGER, JR.
THOMAS H. WATKINS
ELIZABETH HULEN
WM. E. SUDDATH, JR.
SHELBY R. ROGERS
WM. F GOODMAN, JR.
JAMES A. BECKER, JR.

JOE W. HOBBS
H. H. WHITWORTH
W. THAD COCHRAN

P. O. BOX 650
AREA CODE 601
353-2711
353-7216

August 30, 1966

Mr. John F. Davis, Clerk
Supreme Court of the United States
Washington, D.C. 20543

In re: Pierson, et al. v. Ray, et al., No. 1074;
Ray, et al v. Pierson, et al., No. 1155;
Consolidated

Dear Mr. Davis:

Would you please give me the status of this case. We have received no copy of the record and assume that it has not been filed.

Sincerely yours,

WATKINS & EAGER

EH/jhw

By____________________
Elizabeth Hulen Grayson

cc: Mr. Carl Rachlin
38 Park Row
New York 38, New York

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

September 1, 1966

Mr. Carl Rachlin
38 Park Row
New York, New York 10038

Re: PIERSON v. RAY
No. 79, October Term 1966
RAY v. PIERSON
No. 94, October Term 1966

Dear Mr. Rachlin:

I have been told of your inquiry this morning concerning the costs of printing the record in the above cases. It has long been the practice of this Court to require the initial payment for the printing to be made by the lowest number of a series of connected cases, unless, of course, the parties can arrive at an agreement between themselves with respect to a distribution of costs. It is obviously too late at this stage to make such an arrangement here.

I am entirely sympathetic with your problem concerning the cost of litigation, and I only regret that you did not see fit earlier to make some motion to the Court to proceed *in forma pauperis* or on a type-written record or in some other way to reduce the expenses of the case. If there is any way for you to reduce future expenses here, you should not hesitate to get in touch with us.

Very truly yours,

John F. Davis

John F. Davis,
Clerk

September 8, 1966

Hon. John F. Davis
Clerk, Supreme Court of the United States
Washington, D. C. 20543

Re: *Pierson* v. *Ray*
No. 79 October Term 1966
&
No. 94 October Term 1966

Dear Mr. Davis:

Thank you for your kind letter of September 1, 1966. We did not forget to raise the issue *in forma pauperis* but I do not believe my client could qualify in that regard. However, an expense of $3000 for printing the record is still a burdensome matter and we appreciate the fact that there may be ways to reduce expenses for the future. The only question that concerns me here was whether it was appropriate for us to ask for one half of the cost of the record from the other party to the proceeding in view of the fact that this whole matter of submitting of briefs is being done pursuant to a stipulation. That is, we are submitting the first brief, they are submitting a reply and then we have the right to submit a response. In any event, I thank you for your kind offer and I will most certainly avail myself of your suggestion.

Very truly yours,

Carl Rachlin
General Counsel

CR/vh

September 19, 1966

Mr. Henry M. Di Suvero, Esq.
New York Civil Liberties Union
156 Fifth Avenue
New York, New York

file

Dear Henry:

I have gone over the brief in *Tracey v. Horn* and I think your arguments are very well made. When will oral argument be heard on this case? As you know, I expect to argue *Pierson v. Ray* probably in October though it may not come until November and there will be certain overlapping. In *Tracey v. Horn* there are other important issues in addition to the question of the statutory history.

I take it that since Judge Hemphill gave you leave to plead over depending upon what the Fourth Circuit does with it will determine the nature of the modified pleading if there has to be one at all.

I agree with you that this is a rather important case for several reasons and particularly because of C.O.R.E. and L.C.D.C.'s involvement I would, perhaps, suggest that you pick out that much of the case that you want to argue for yourself because I would like to, if possible and if not overly inconvenient to you and for all the other parties to participate in the argument.

I think the brief makes the arguments well and I look forward to a reversal of Judge Hemphill's order. With warm regards.

Sincerely,

Carl Rachlin
General Counsel

CR:tp

Main

FOUNDED 1920/INCORPORATED

AMERICAN CIVIL LIBERTIES UNION aclu

156 FIFTH AVENUE / NEW YORK / NEW YORK 10010 / ORegon 5-5990

Chairman, ERNEST ANGELL; Vice Chairmen, DOROTHY KENYON, WALTER MILLIS, DAN LACY; General Counsel, EDWARD J. DENNIS, OSMOND K. FRAENKEL; Secretary, GEORGE SOLL; Treasurer, SOPHIA YARNALL JACOBS.

Executive Director, JOHN DE J. PEMBERTON, JR.; Associate Director, ALAN REITMAN; Legal Department, Director, MELVIN L. WULF, Assistant Director, ELEANOR H. NORTON; Development Department Director, GORDON K. HASKELL, Assistant Director, THEODORE MOTE, Field Development Officer, J. ROBERT HANSON; International Work Adviser, ROGER N. BALDWIN; Administrative Assistant, LOUISE C. FLOYD, Executive Assistant, ANNE H. STRICKLAND; Staff Associates, JUDITH FOLLMAN, SUSAN GOLDSTEIN.

October 17, 1966

Mr. Carl Rachlin
150 Nassau Street
New York, New York

Dear Carl:

Mel Wulf said you were eager to look at the enclosed release on the Pearson case. Here it is. Would you let me know as soon as possible, as we want to mail the story out. All our best wishes.

Cordially yours,

Alan

Alan Reitman
Associate Director

Called Reitman's Secy 10/18
NS

AR:tb
Enclosure

Washington Office: 1101 Vermont Avenue, N.W., Washington, D.C. 20005; Lawrence Speiser, Director; Mary O'Melveny, Executive Assistant
Southern Regional Office: 5 Forsyth St., N.W., Atlanta, Ga. 30303; Charles M. Morgan, Jr., Director
With organized affiliates in 34 states and 800 cooperating attorneys in 50 states.

HA2-3000- Schwarz
OR5-5990- Walz

file

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

November 21, 1966

Carl Rachlin, Esq.
150 Nassau Street
New York, N.Y.

RE: PIERSON, ET AL. v. RAY, ET AL., No. 79; RAY, ET AL v. PIERSON, ET AL., No. 94, Oct. Term, 1966

Dear Mr. Rachlin:

Due to the fact that the Court today announced that it would hear the Georgia governorship election matter on Monday, December 5th, it will be necessary to postpone the oral argument of the hearing of the above cases. It is possible that they may be reached for argument on Thursday, December 8th, but if not reached at that time, they will not be on call until the January 1967 session of Court. I would suggest that you call this office by long distance after 3:00 p.m. on Tuesday, December 6th, for more definite information.

Very truly yours,

John F. Davis, Clerk
By

E. P. Cullinan,
Chief Deputy.

EPC:ht
AIRMAIL

SENDER
WAITING

TELEGRAPH ANSWER

ESTERN UNION
TELEGRAM

SHALL
HE BOARD

R. W. McFALL
PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

1966 NOV 28 PM 1 10

VUA033 NBC 148 (29)SYB426 CTC123
WKWPIO WW NFA023 COLLECT NF WASHINGTON DC 28 1212P EST

CARL RACHLIN ESQ
150 NASSAU ST NYK

WIRE IMMEDIATELY WHO WILL ARGUE FOR PETITIONERS IN NO. 79 AND RESPONDENTS IN NO. 94.

Hon JOHN F DAVIS CLERK US Sup Ct; Wash, D C.
:16).

Re 79 & 94 Pl advise that C R will argue the same for petitioners

SF1201(R2-65)

1 CHASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005

December 13, 1966

Dear Carl;

Herewith the book on reconstruction and the Congressional Globe covering the 1866 legislative history which we cite at page 24 of our brief. Unfortunately, our library did not obtain the correct material covering the 1871 legislative history. Perhaps you could get it from the Institute. If you cannot, telephone me on Thursday and I will have our library get it. (I am going to be away all day Wednesday.)

The Congressional Globe has to be returned to the Institute by Friday. The book is mine and can be returned any time.

Sincerely yours,

Frederick A. O. Schwarz, Jr.

Carl Rachlin, Esq.,
150 Nassau Street (10th Floor),
New York, N. Y.

Encl.

8

for filing

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

December 15, 1966

Carl Rachlin, Esq.
150 Nassau Street
New York, N.Y.

re: PIERSON, ET AL. v. RAY, ET AL.,
No. 79; RAY, ET AL. v. PIERSON,
ET AL., No. 94, Oct. Term, 1966

Dear Mr. Rachlin:

Counsel in the above-entitled cases should be present for the oral argument on Wednesday, January 11th. I assume that you will present the oral argument for the petitioners in No. 79 and the respondents in No. 94. However, if I am in error in this regard, kindly advise immediately.

Very truly yours,

JOHN F.DAVIS, Clerk
By

E. P. Cullinan,
Chief Deputy.

Encl.
EPC:ht

AIR MAIL

NOTICE TO COUNSEL

Cases are not assigned for a day certain nor are they called until actually reached for argument. The Clerk informs counsel as to the day they must be present and the case upon which they are in attendance is usually heard that day or the following day.

The Court convenes at 10 a. m. and, except on Mondays when there may be opinions or orders to be announced, the argument of cases begins immediately after admission of attorneys to practice.

The names of counsel who will argue and the order in which they will appear, if more than one on a side, should be given to the Clerk as soon as determined. Those who will argue must register with one of the clerks in Room 102 prior to entering the Court Room to await the call of their case. Identification cards will be issued authorizing occupancy of the tables directly behind Counsels' tables when argument in the preceding case begins. Counsel should remain seated at these tables while the preceding case is being argued.

In cases on the Summary Calendar but one counsel may argue on each side and his time is limited to one-half hour. In other cases the time is one hour for each side and two counsel are permitted to speak although divided arguments are not favored. (Rule 44.)

Signal lights on the lectern are employed to inform counsel when time has expired. A white light appears when five minutes remain and a red light when time has expired. The red light alone indicates the arrival of the 12 to 12:30 luncheon recess and the 2:30 adjournment. When counsel desire to save time for rebuttal or when time is to be prorated in the case of a divided argument arrangement may be made with the Marshal, prior to the time case is called, to have an appropriate signal flashed at a specified time. Where counsel have agreed to a division of the time for argument, the use of more time by one attorney does not extend the total time allotted. Inquiry should *not* be made of the Chief Justice as to amount of time remaining.

Counsel in cases being argued at or after the luncheon recess may make luncheon arrangements with the Marshal before 11 o'clock.

Admissions to the Bar are entertained each day the Court is in session. If not previously admitted counsel who plan to argue may be admitted on the day their case is heard provided the necessary application papers have been filed and approved. JOHN F. DAVIS, *Clerk*.

In the

SUPREME COURT OF THE UNITED STATES

No.

ROBERT L. PIERSON, et al., *Petitioners*

v.

J. L. RAY, et al., *Respondents*

APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI

To the Honorable Hugo L. Black, Associate Justice of the United States Supreme Court and Circuit Justice for the Fifth Circuit:

The petitioners hereby respectfully apply for an extension of time within which to file a petition for a writ of certiorari to review the judgment of the Court of Appeals for the Fifth Circuit in the above-entitled proceeding. That judgment was entered on October 25, 1965, and the time in which to file such a petition will expire on January 24, 1966. This application requests that the time be extended from January 24, 1966, to and including February 24, 1966.

The judgment of the Court of Appeals, in its pertinent parts,

(1) ordered the District Court of the Southern District of Mississippi to dismiss petitioners' civil

action for damages for deprivation of civil rights under 42 U.S.C. §§ 1981, 1983 and for false arrest and imprisonment against respondent James L. Spencer, a police justice and ex-officio Justice of the Peace in the City of Jackson, Mississippi, and

(2) reversed the District Court's judgment entered upon a jury verdict in favor of the three other respondents, police officers of the City of Jackson, Mississippi, upon petitioners' claim against those respondents pursuant to 42 U.S.C. §§ 1981, 1983, *but* held that recovery upon petitioners' otherwise valid claim would be precluded if it could be shown that petitioners had "a plan and purpose of being arrested and jailed."

The jurisdiction of this Court rests on 28 U.S.C. § 1254 (1).

Petitioners, three white and one Negro Episcopal Clergyman, were arrested and confined in jail by the police-officer respondents and convicted and sentenced to jail by respondent Spencer for failing to "move on" when ordered to do so by a police officer as they entered the waiting room of a bus station stating "White Waiting Room Only--by Order of Police Department". Upon appeal to the Hinds County Court by way of a trial de novo, the first petitioner to appeal was found not guilty and the prosecution then nolle prosequied the charges against the other petitioners. The statute under which petitioners had been convicted was subsequently held invalid by this Court as applied to circumstances such as those involved in this case. *Thomas v. Mississippi*, 380 U.S. 524 (1965).

Petitioners sought damages against respondents alleging joint action by respondents to arrest, convict and jail petitioners in order to deprive them of rights, privileges and immunities secured to them by the Constitution and laws of the United States for the purpose of enforcing the segregation laws, customs, policies and usages of the State of Mississippi.

With respect to the Circuit Court's order that the complaint against respondent Spencer be dismissed, the primary issue raised by this case is whether a police justice is immune from suit under 28 U.S.C. § 1983 even though the section on its face applies to "every person" and (2) the legislative history of the statute indicates that it was intended by its supporters and understood by its opponents to apply to judges.

The holding that recovery of damages for an invalid arrest and conviction would be precluded if petitioners went to Jackson with "a plan and purpose of being jailed" renders, in light of the evidence, the civil remedy under 28 U.S.C. § 1983 valueless whenever persons know that there is a likelihood that state officials will illegally act to preserve segregation but nevertheless decide to exercise their constitutional rights.

The requested extension is sought for the following reasons:

Counsel for petitioner is National Counsel for the Congress of Racial Equality. Because of the extremely limited staff available to him, he has had to seek assistance from lawyers employed in private practice. In this case, he contacted Frederick Schwarz of the New York bar and requested assistance in preparing the petition for petition for certiorari. Mr. Schwarz's schedule for preparing the petition was disrupted by the just concluded transit strike in New York City. Further time is necessary in order to ensure adequate presentation of petitioners' case to this Court.

Wherefore, it is respectfully requested that the time for filing the petition be extended to and including February 24, 1966.

Respectfully submitted,

Carl Rachlin

Carl Rachlin
38 Park Row
New York, N.Y.
Counsel for Petitioners

January 16, 1966.

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL
575 MADISON AVENUE NEW YORK, N. Y. 10022

SAMUEL I. ROSENMAN
RALPH F. COLIN
SYDNEY M. KAYE
ALLAN D. EMIL
WALTER J. PETSCHEK
MAX FREUND
AMBROSE DOSKOW
SEYMOUR D. LEWIS
LAWRENCE R. ENO
MURRAY COHEN
ANDREW J. SCHOEN
JEROME L. SINDLER
ASA D. SOKOLOW
STUART ROBINOWITZ
GILBERT S. EDELSON
ARNOLD I. ROTH
LAWRENCE B. BUTTENWIESER

MURRAY HILL 8-7800
AREA CODE 212
CABLE ADDRESS
"ROCOKAY NEWYORK"

February 10, 1967

Carl Rachlin, Esq.
165 W. 46th Street
New York, New York

Re: Pierson v. Ray

Dear Mr. Rachlin:

I spoke to you on the phone many months ago about the decision of the Court of Appeals in Pierson v. Ray. I told you at the time that I was representing a plaintiff who was suing Ray and Griffith for damages arising out of his arrest in an effort to integrate a Jackson church in 1963.

I would very much appreciate it if you would give me a ring and let me know what the status is of the Pierson case.

Sincerely yours,

Asa D Sokolow
Asa D. Sokolow

ADS:ms

Dear Mr Sokolow
Pierson was argued
a month ago and we are
awaiting a decision.
Sincerely

File Pierson / Ray

WATKINS & EAGER
ATTORNEYS AND COUNSELORS AT LAW
800 BANKERS TRUST PLAZA BUILDING
JACKSON, MISSISSIPPI 39205

WILLIAM H. WATKINS
1895-1959
PAT H. EAGER, JR.
THOMAS H. WATKINS
ELIZABETH HULEN
WM. E. SUDDATH, JR.
SHELBY R. ROGERS
WM. F. GOODMAN, JR.
JAMES A. BECKER, JR.
JOE W. HOBBS
H. H. WHITWORTH
W. THAD COCHRAN

P. O. BOX 650
AREA CODE 601
353-2711
353-7219

February 18, 1967

FEB 21 1967

Honorable Dan M. Russell, Jr.
United States District Judge
P. O. Box 1930
Gulfport, Mississippi

RE: Robert L. Pierson, et al v.
J. L. Ray, et al
Civil Action No. 3315(J)

Dear Judge Russell:

We are in receipt of your March 1967 docket settings for Jackson and note that this case has been set for March 14, 1967.

This case is now pending in the Supreme Court of the United States where it has been orally argued but not yet decided. We believe that it should be removed from your present docket settings pending disposition by the Supreme Court.

With kindest regards, we remain

Very respectfully yours,

WATKINS & EAGER

BY Tom Watkins
Thomas H. Watkins

THW:mb
cc: Hon. E. W. Stennett
Hon. Carl Rachlin

February 21, 1967

Asa D. Sokolow, Esq.
Rosenman, Colin, Kaye Petschek
Freund & Emil
575 Madison Avenue
NewYork, New York 10022

Re:Pierson v. Ray

Dear Mr. Sokolow:

Pierson was argued a month ago and we are awaiting a decision.

Sincerely,

Carl Rachlin
General Counsel

CR:n

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

W. P. MARSHALL
CHAIRMAN OF THE BOARD

TELEGRAM

R. W. McFALL
PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

VUA018 NBD164 KQYLCTB134 1967 APR 11 PM 12 58

CT CZC104 (WW NFB003) COLLECT NF WASHINGTON DC 11 1120P EST

CARL RACHLIN
150 NASSAU ST NYK

JUDGEMENT PIERSON AND RAY CASE AFFIRMED TODAY IN PART AND REVERSED IN PART

JOHN F DAVIS CLERK

(04).

File

SF1201(R2-65)

Dallas, Texas 75221,
P. O. Box 3015,
April 23, 1967.

Carl Rachlin, Esquire,
Congress of Racial Equality,
38 Park Row,
New York 38 New York,

Thomas H. Watkins, Esquire,
800 Plaza Building,
Jackson, Mississippi,

Re: Causes Nos. 79 and 94--October Term, 1966.
In the Supreme Court of the United States
Pierson, et al., Petitioners
vs.
Ray, et al., Respondents
and
Ray et al., Petitioners
vs.
Pierson et al., Respondents

Sirs:

I have studied with considerable concern, the opinion delivered and published in the above litigations and this letter is to importune each of you to prepare and file a petition for rehearing properly raising the questions which were resolved against you in such opinion. Either both or neither judicial officials are liable in the circumstances of the operative facts of such litigations as same appear from such opinion. In the event that petitions for rehearing are filed, I have in mind to prepare and file an amicus curiae brief stating my view and reasons for same, that both or neither of such categories of officials should be held liable.

I would appreciate your advising me concerning the filing of petitions for rehearing in such matters and in the event of your filing of same, I would like to obtain copies of all materials concerning such litigations as will be needed in connection with my efforts concerning same. I have in mind that if extra copies of such material are not available, xeroxed copies could be made and furnished at my expense.

I am, Sirs,

Very respectfully yours,

Curtis E. Hill

Curtis E. Hill.

Pierson v. Ray

Dallas, Texas 75221,
P. O. Box 3015,
April 23, 1967.

Carl Rachlin, Esquire,
Congress of Racial Equality,
38 Park Row,
New York 38, New York,

Re: Causes Nos. 79 and 94--October Term, 1966
In the Supreme Court of the United States
Pierson, et al., Petitioners
vs.
Ray, et al., Respondents
and
Ray, et al., Petitioners
vs.
Pierson, et al., Respondents

My dear Mr. Rachlin:

I write you this seperate letter to state that the holding in the above matters that judicial immunity is absolute under any and all circumstances is squarely against a theory for an Earth wide total method of societal system on which I have been working for more than sixteen years. My work on it will be completed in the expository stage within the next few months and transmitted to about sixty to sixty five of Earth's intellectually most aristocratic personages and institutions for refutation. I expect to win the Nobel Peace Prize for my efforts, whether this year or later, which will, of course, catapult the entire idea into Earth wide publicity. The first relese will be an open letter to the President of the United States and the Premier of Russia, jointly, entitled A STATEMENT OF A SYSTEM OF CONCEPTS UPON WHICH AS A FOUNDATION AN EARTH WIDE TOTAL METHOD OF SOCIETAL SYSTEM CAN BE ESTABLISHED WHICH IN IMPLEMENTATION WILL CONTINUE EARTH'S SOCIETY IN SUCH FURTHER PROGRESSIVENESS AS CAN PRESENTLY BE FORESEEN AND REASONABLY EXPECTED. It will be printed with the names and addresses of a selection of personages and institutions shown below its conclusion with a copy to each of them and invitation and challenge of any and all persons on Earth to refute same. At the hard core of the entire matter will be the contention that unless every method of law is established and implemented at the standard or level of due process of law as such concept is infused with modern philosophy including modern science, that is abstract mathematics, relativity, quantum mechanics, field physics and the upcoming new theory of matter, Earth's society not only cannot and will not move into its now long overdue next stage of progressiveness but is destined to be ended forever by full scale global nuclear war which sooner or later is bound to eventuate from the idea that national sovereignty as to each nation on Earth must be maintained in absoluteness with respect to every other nation on Earth which can be done only by war. I am constrained to admit that the effort which I am making, which emanated from my efforts as a practicing member of the Dallas Bar to earn a livelihood for my children and my self where the standard or level at which the judicial process is controlled both in the state and federal judicial systems by a little oligarchy of about 250 men so that such persons can realize about has continuously been very unpopular. 85% of all profits earned in the City of Dallas and its environs. My effort will reflect why the Kennedy assasination, the Oswald assasination, the Jack Ruby shameful and disgraceful trial and many other such phenomena which have put Dallas continuously in world wide publicity during the last several years was and is an inevitable consequence of control of the standard or level at which the judicial process is implemented in all courts of the state and federal judicial systems in the Dallas Area. Within the next week I will send you a copy of a brief in a state appellate court which is now in process of preparation which will outline a little more fully and clearly my total theory, provided you advise me that you would like to be furnished a copy of such brief.

In order that best opportunity for adequate presentation of my contentions concerning the matter may be had, effort should be made to obtain a carrying over to the 1967 Term of Court the disposition of the Petitions for Rehearing. Under the rules no provision is made for an amicus curiae to have any time at all to prepare and file a brief in support of a petition for rehearing. Without my telling you what you should do, I would like to suggest that you file a motion at the proper time before the expiration of 25 days from April 11, 1967 for an order extending the time at least thirty days for the filing of a petition for rehearing and personally present to the Justice for the Fifth Circuit. If same is granted-and if Justice Black does not you can take such motion to other members of the Court until one is found who will grant it, then I would like for such petitions for rehearing to be completed and with other materials needed for my work on the amicus curiae brief furnished me so that I can complete and file such amicus curiae brief no later than the extended time for filing petitions for rehearing. Unless such procedure is implemented, I am afraid the Court will deny such petitions for rehearing before the current term ends about the middle of June in which event the decision in the above matters which is clearly erroneous under relevant considerations, will have become final and in consequence most difficult to correct.

I live and office at the Hotel Dallas, Riverside-2-6101, in the event thatat any time you should wish to communicate with me by telephone or telegram.

Thanking you, I am,

Very respectfully yours,

Curtis E. Hill

Curtis E. Hill.

Pierson Ray

May 1, 1967

Carl Rachlin, Esq.
150 Nassau Street
New York City, N. Y. 10038

Dear Mr. Rachlin:

Thank you for the inspection of the papers you had in Pierson v. Ray.

I assume you are going back to the District Court to re-try the case against the police officers. A pencil note on the brief indicates you have raised the question of the character of Spencer as a police judge, as possibly bearing on the question of immunity. This leads me, as do other things, to believe that you have not, heretofore, in the litigation paid complete attention to some questions that might be exceedingly valuable on retrial, and I would like to suggest some of them to you.

I. What is the law of arrest of Mississippi? At common law, arrests did not lie for misdemeanors unless they amounted to actual breach of the peace, except by warrant. (See P. V. PHILLIPS, 284 N.Y. 235). Did Mississippi law, as of the time of the Pierson case arrests, authorize arrests on mere (non-breach-of-the-peace) misdemanors? Certainly, a charge that one did acts which "might occasion a breach of the peace", does not charge one did acts that did amount to a breach of the peace, as the former is anticipatory or prospective only. Breach of peace, of course is not only affray, but tumult likely to result in affray. (P. V. MOST, ______NY _______). Thus a "might occasion breach of peace" statute is not one which encompasses the acts of violence, or acts occasioning tumult, but something less, and if there is no non-breach-of peace misdemaanor arrest power in Mississippi, then the arrests of Pierson, et. al., were void, as _sans_ legal authority, without reference to the issue of probable cause. (New York has incresed the summary arrest power of police to enable them to arrest for all misdemeanors, without reference to the common law limitation that the offense mush also be a breach of peace to warmant summary deterntion.

II. The common law rule is that one who is breach of the peace himself, cannot be heard to complain of the same conduct by another in the same event. When the police officers commanded Pierson and others to stop, this was an arrest, and the arrest had to be justified at that point. As Blackstone notes, a detention in any place public for even a slight time under color of official authority is an arrest. There probably is a Mississippi statute that requires one making an arrest to take the person forthwith before a magistrate, of j.p. If the police officers did "stop" i.e., arrest, Pierson, et. al., and then command them to move on, they failed their arrest duty under Mississippi law, if that law provides for forthwith magistrate production. (If you will note the definition of the te term "arrest", it comes from the Latin and French "arrestare" meanning to "stop" or "stay".

Thus, questions should go to establishing the "reasons" for the initaial "stopping" of Pierson, et. al. Query: "Officer -- at the time you told Pierson, et. al., to stop, if they had not done so, would you have used force to stop them?" Q: Officer - what direction were Pierson, et. al., walking (North, South, East or West) when you first commanded them to halt in their movement?" Q; Officer, how long did they remain standing still after you first commanded them to halt? Q: Officer, at the time you first commanded them to halt, did you speak anything further to them, beyond merely commanding them to halt? Q: Officer did you state to them that they were committing a crime? Q: Officer, prior to stopping them, did you have any discussion with your fellow policde officer there concerning the Defendants? Q Officer, did you at that time state to your fellow officer that you two should arrest the defendants, or words to that effect, for committing some criminal offense? Q; Officer, what was that criminal offense that you intended to then arrest the Defendants upon? Q: Officer -- waht did you see at or about that time concerning the offense that now you say constituted their criminal wrongdoing? etc., etc.

Once the original cause of detention is established, or established to be without cause, you then deal with the problem of the officers' later commands to the Defendants to move on. If cause for the inital detention is established, then the officers bereach their duty to forthwith take the Defendants to a magistrate, and the refusal to move on is an order to the Defendants to be deprived of hearing before the magistrate. If no cause is established, then you move to the problem of whether the order was not calculated to deprive of constitutional freedom because of pending violence threatened against them by others whom the officers should have restrained, instead of restraining the Defendants. You, of course, are already well covering this latter alternative, but, as you see, it is not the sole determinative possible situation.

I hope the foregoing might be of some use to you, as it is important that you win the False Imprisonment claim under the C.R.Z. against the Police Officers, to confirm the principle of Monroe v. Pape further.

All this is important to the issue of whether or not, because Spencer was a mere police justice, he mayn not be held liable under a theory of want of jurisdiction because the Defendants were brought before under false arrest. Perhaps since no objection was taken to his jurisdiction over the Defendants person, because they were brought there by false arrest, this kind of claim has been waired. But See PEOPLE V. DREARES, 15 A.D. 2d in which the Appellate Division notes that the civil and crinal laws of false imprisonement are different.

John M Lawrence

houston Law Review

3801 CULLEN BOULEVARD, HOUSTON, TEXAS 77004

May 8, 1967

Mr. Carl Rachlin
38 Park Row
New York, New York

Dear Sir:

The Houston Law Review is planning to note Pierson v. Ray, 87 S. Ct. 1213 in our forthcoming issue. To facilitate exhaustive research of the case within stringent time limitations, we would appreciate a copy of your brief and any other material you might find helpful. We will mail you a copy of the note soon after publication.

We hope that you will not be inconvenienced by this request.

Sincerely,

HOUSTON LAW REVIEW

John Stepp

John Stepp
Note Editor

JS/pa

mailed 5-12-67.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

June 19, 1967

Clerk
U. S. District Court
Jackson, Mississippi

RE: No. 21325 - Robert L. Pierson,
Et Al. - vs - J. L. Ray, Et Al.
(Your No. 3315-Civil Action)

Dear Sir:

Enclosed please find certified copy of the judgment of this Court in the above case, previously issued as mandate on November 16, 1965, and recalled by this Court's order of February 11, 1966, together with a copy of its opinion.

Also enclosed is a copy of the judgment of the Supreme Court of the United States received and filed in this office on June 16, 1967.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By ______________________
Chief Deputy Clerk

/je
Encls.

cc: (Letter Only)
Mr. L. H. Rosenthal
Mr. Carl Rachlin
Mr. Thomas H. Watkins
Mr. E. W. Stennett
Miss Elizabeth W. Grayson

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

June 13, 1967

Carl Rachlin, Esquire
150 Nassau Street
New York, New York

RE: Pierson et al. v. Ray et al., No. 79;
and
Ray et al. v. Pierson et al., No. 94,
October Term, 1966

Dear Mr. Rachlin:

A certified copy of the judgment of this Court in the above-entitled cases has been mailed today to the Clerk of the United States District Court for the Southern District of Mississippi.

The receipted statement to cover the deposit hereto made in case No. 79 and refund check will be mailed to you at a later date.

Very truly yours,

JOHN F. DAVIS, Clerk

By Evelyn R Limstrong

(Mrs.) Evelyn R. Limstrong
Assistant

Pierson, Robert L. et al vs. Ray, J.L. - Mississippi District Court
[Depositions]

Society of Wisconsin

Please Retain Original Order

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

APPEARANCES:

CARL RACHLIN, ESQ.
280 Broadway
New York, New York
ATTORNEY FOR PLAINTIFFS

E. W. STENNETT, ESQ. and
THOS. H. WATKINS, ESQ.
Jackson, Mississippi
ATTORNEYS FOR DEFENDANTS

DEPOSITION OF JAMES. P. BREEDEN
Jackson, Mississippi
February 15, 1963

BE IT REMEMBERED that the depositions of the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., as adverse parties were taken by the defendants in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above styled and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 8:00 a.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action on January 15,1963, and pursuant to the following additional stipulation, to-wit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the plaintiffs may be taken before Mildred A.Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of said depositions, same shall be presented to one counsel of record for each of the parties and thereafter to each of the

plaintiffs for reading and signature, which signature and verification may be had before any notary public or other officer qualified to administer oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency, or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party reserves the right to object to otherwise inadmissible

matters elicited in the course of the depositions.

APPROVED:

Carl Rachlin /s/
Of Counsel for Plaintiffs

APPROVED:

Thos. H. Watkins /s/
Of Counsel for Defendants

JAMES P. BREEDEN

having been first duly sworn, testified as follows:

BY MR. WATKINS:

Q. Please state your full name?

A. James Pleasant Breeden.

Q. Your age?

A. 28.

Q. The extent of your education?

A. Secondary school, Dartmouth College, Union Seminary in New York; B.A. degree at Dartmouth, B.D. degree at Union Seminary.

Q. Are you married?

A. Yes, I am.

Q. Please give me your wife's maiden name?

A. Jean Marie Savoye; S-a-v-o-y-e.

Q. Do you have children?

A. Yes.

Q. Give me the number of children and their ages, please?

A. One child, Margaret Lee, who is one year and one week old.

Q. Are you an Episcopal minister?

A. I am.

Q. What churches have you served?

A. As a minister, I have served St. James Episcopal Church in Roxbury.

BY MR. RACHLIN:

Identify the State.

A. Massachusetts. And that's all.

BY MR. WATKINS:

Q. And when did you begin and when did you stop, if you have stopped serving that church?

A. I began in September, 1960, and I continued to serve that church.

Q. Then, you were serving in that church at the time you took part in the pilgrimage?

A. That is correct.

Q. And who is your immediate superior?

A. The Reverend Cornelius DeWitt Hasty.

Q. And did he give you his approval of your taking part in the pilgrimage?

A. Yes, he did.

Q. Did you tell him that you planned to visit Jackson as a freedom rider?

A. No, I never told him that. He was also present on the pilgrimage.

Q. Then, he knew you were planning to visit Jackson as a freedom rider, didn't he?

A. He knew that there was a plan to visit Jackson. We never identified ourselves or considered ourselves to be freedom riders.

Q. You did not?

A. No.

Q. You did not consider yourselves as acting in exactly the same way that other groups had who did call themselves freedom riders?

A. I wasn't familiar enough with the ways they acted to know.

Q. You had not read about it in the press?

A. Oh, yes, I read, but I knew that we were intending to visit clergy and churches, and schools, and I was not aware that any of those who had been identified as freedom riders had any such intentions.

Q. In addition to your intention to visit churches and schools, did you also intend to take action in the bus station in Jackson, Mississippi, in a similar manner to those who had called themselves freedom riders?

A. In a similar manner, as far as I know, yes.

Q. In other words, you and your superior knew when you came on this trip that you were possibly subjecting yourselves to arrest and jail just as those groups that called themselves freedom riders had subjected themselves to arrest and jail?

A. I earnestly hoped that we wouldn't, but I knew that was a possibility.

Q. And that possibility and how you might be treated was discussed in great detail in your meetings in New Orleans before you came up, weren't they?

A. In great detail?

Q. Well, were discussed?

A. There was some discussion of this possibility, yes.

Q. Will you describe for me the identity of the people who spoke at those meetings and the nature of what they described?

A. The only person whose name I know - Well, there were a number of people who spoke from the pilgrimage. Is my assumption correct that you mean others than those who were involved in the pilgrimage?

Q. Yes, other than members of the pilgrimage.

A. As did the Reverend Mr. Pierson, I only recall the name of Reverend Mr. Walker speaking.

Q. Do you recall James McCain speaking?

A. No, I don't.

Q. Did you meet James McCain?

A. I don't believe I've ever met him.

Q. Do you know who he is?

A. No, I don't.

Q. Did you meet Tom Gaither?

A. In New Orleans?

Q. Yes.

A. No, I didn't.

Q. At Tougaloo?

A. I am not certain.

Q. You met him before you were arrested in the bus station here in Jackson, didn't you?

A. I believe so, but I am really not certain.

Q. You know who he is, don't you?

A. I do know who he is, yes.

Q. And you knew when you talked to him that he was the Field Secretary for CORE in Jackson, didn't you?

A. When I talked - My first recollection of meeting him, when I did meet him, I knew he had this position, yes, but I am just not certain. My memory as to whether I met him at Tougaloo is not clear.

Q. And you discussed with him before you went to the station and were arrested what would probably occur and what the circumstances would probably be, didn't you?

A. As I say, since I don't recall whether I met him prior to having been in Jackson in jail, I can't answer that as to what --

Q. You knew that he was in charge of acting for CORE for the freedom riders generally who came into Jackson, didn't you?

A. I did not know that, no.

Q. And you anticipated the probability of your being arrested and put in jail in Jackson, didn't you?

A. No. I anticipated the possibility, but certainly not the probability.

Q. Had you seen this message apparently prepared by ESCRU, or your group, which has been marked as Exhibit "A" for identification, before your trip to Jackson?

(Witness looks at instrument.)

A. I did see a message similar to this. Whether it was precisely this, I am not certain.

Q. Does that correctly outline the purposes of the trip so far as you know and believe?

A. Yes.

Q. What I have asked you about is Exhibit "A" to the deposition of Reverend Pierson; you understand that?

A. Yes, I do.

BY MR. RACHLIN:

No objection.

BY MR. WATKINS:

I asked that last question because I don't intend to duplicate these Exhibits with all these depositions, but it will be attached.

BY MR. RACHLIN:

They can be deemed marked accordingly, Mr. Watkins. I have no objection.

BY MR. WATKINS:

Q. What communications passed in writing between you and ESCRU prior to the pilgrimage?

A. I recall an announcement of the pilgrimage which came to me and an application which I returned to the national office.

Q. Do you have the original or copies of either of those communications?

A. With me?

Q. Yes.

A. No, I don't.

Q. Did you or do you know whether ESCRU has issued any written communications to your churches generally or in connection with this trip since your arrest?

A. ESCRU has. I have not.

Q. Do you have those in your possession?

A. I don't.

Q. Has any written memoranda, message or communication been issued by ESCRU since this lawsuit was filed purporting to explain this lawsuit or the reasons for it?

A. I am sorry, I didn't hear the last of that sentence.

Q. Has any such message been issued by ESCRU or any of you plaintiffs since this lawsuit was filed purporting to explain the reasons for the lawsuit?

A. I believe there was an item in a news letter that I received from ESCRU, yes.

Q. Do you have that?

A. I don't have, no.

Q. What is the purpose of this lawsuit?

A. The purpose? It is to recover damages which were suffered by us in our arrest and detainment here in Jackson.

Q. Whose idea was the lawsuit?

A. The several of us together discussed it.

Q. You four plaintiffs?

A. Yes.

Q. And no one else?

A. You mean - I don't know that any - I am certain that other people had the idea.

Q. Did ESCRU suggest it?

A. Did ESCRU suggest it? ESCRU is an organization, and as such --

Q. Did any officer of ESCRU suggest it?

A. I myself am an officer of ESCRU.

Q. That still doesn't answer my question?

A. Well,then, yes. If you mean the original suggestion, I don'tknow the source of the original suggestion.

Q. Who retained Mr. Rachlin and Mr. Higgs as your Attorneys for this lawsuit?

A. As far as I know, we, as the plaintiffs, retained them.

Q. And are you all paying their fees?

A. The several hundred or perhaps thousands of members and friends of ESCRU have contributed to the payment of their fees.

Q. Then ESCRU is taking care of the fees of the attorneys?

A. It is handling the finances, yes.

Q. And your attorneys do not have the case on a contingent fee basis?

A. I am sorry, I don't understand.

Q. Whether Mr. Rachlin is paid doesn't depend on whether you recover something in this lawsuit, does it? Does he get a percentage of what you recover in this lawsuit?

A. I don't know. I don't believe so.

Q. Please describe for me what illustrations were exhibited to you in your New Orleans meeting as to what you might expect on your visit to Jackson?

A. You mean pictures of some sort?

Q. Well, demonstrations of possible violence.

A. There was one demonstration that had to do with the possibility of violence were we seated at a lunch counter and had some individuals there wanted to act violently against us.

Q. What took place in the room? How did they portray that scene?

A. We were seated - Well, I myself didn't participate in the demonstration. Some of our group were seated at a table, and some others in the room came up behind them and pulled them off of their seats.

Q. Onto the floor?

A. Yes.

Q. While they were on the floor, did they strike them or kick them?

BY MR. RACHLIN:

I lost the question.

BY MR. WATKINS:

Q. While the person was on the floor, was the person struck or kicked by the demonstrator?

A. I was in the back of the room at that point, and didn't see everything, but I think there was some motion of striking or kicking, I believe.

Q. And that was shown to you as typical of what you might expect in Jackson, Mississippi?

A. As I understood it, it was something that was a possibility just because we were a group travelling in this part of the country as an integrated group. It didn't, in my mind, have any relationship to any specific place such as Jackson.

Q. Now, you have heard Reverend Pierson's description of the trip in some detail, haven't you?

A. Yes.

Q. From New Orleans to Detroit?

A. Yes.

Q. Are you willing to adopt his testimony as to the description of that trip and what happened without going over each question and answer, or are there any qualifications or changes you would make in it?

A. I am willing to accept it generally.

Q. In the meeting in New Orleans, were there any pictures shown?

A. No.

Q. After you were in Mississippi, did anyone urge your group not to go to the bus station and subject yourselves to arrest, and I mean by that the bus station in Jackson?

A. I don't recall anyone.

Q. If such a suggestion had been made emphatically to the group as a whole, you would recall it, don't you think?

A. Yes, I would.

Q. You knew that violence had resulted from the group that called themselves freedom riders going into Alabama, didn't you?

A. Yes.

Q. And you also knew that hundreds of people who called themselves freedom riders had also come into Jackson, Mississippi, didn't you?

A. Yes, I did.

Q. And you knew that hundreds of them had been arrested, didn't you?

A. Yes.

Q. Did you openly endorse the purposes and activities of those people who called themselves freedom riders?

A. At any point in my - You mean at any time?

Q. Yes.

A. Yes, I have.

Q. And have you ever changed that opinion?

A. No.

Q. You felt so strongly that what those people were doing, who called themselves freedom riders, was correct, that you thought those activities ought to be carried out even if violence resulted, didn't you?

A. Yes, I think that the result of violence was not the most important thing about what was going on.

Q. As a matter of fact — you may have been the one — didn't a member of your group tell Mayor Allen Thompson here in Jackson that you felt that what you were doing was so important that it should be done even if bloodshed resulted?

BY MR. RACHLIN:

Excuse me just a minute. May we clarify the "you", Mr. Watkins? Are you referring to him personally?

BYMR. WATKINS:

Yes.

A. May I have the question again; I am sorry.

Q. Maybe the question was poorly phrased. I'll rephrase it. Didn't you or some member of your group in your presence tell Mayor Allen Thompson of Jackson that you felt so strongly about the activities of the freedom riders and your group that you thought those activities ought to be carried out even though bloodshed might result?

A. I have never been in the presence of Mayor Allen --

Q. Allen Thompson.

A. Allen Thompson. I have never been in his presence.

Q. Then, you are giving me a negative answer to that?

A. Yes, that is correct. I wanted to clarify what the negative was because I have never met the Mayor.

Q. But you do feel that the activities of the freedom riders and of your group were such that they would be justified even if bloodshed did result, don't you?

A. I was prepared to accept, if you will, my blood being shed, yes,

Q. You felt that strongly about what you were doing?

A. Yes.

Q. And you knew that your presence and the presence of other members of your group in Jackson would be highly resented by some, didn't you?

A. I didn't know that. I obviously had reason to believe that was possible.

Q. And you came to Jackson knowing or believing — I'll put it that way — that if you disobeyed the orders of the police department of this city, you would be arrested, didn't you?

A. Yes, I think I did.

Q. And you wanted to be arrested, if necessary, to carry out the program that you had gone into, didn't you?

A. I never at any point wanted to be arrested.

Q. If it was necessary to carry out this program that you were engaged in, you wanted to, didn't you?

A. I didn't want to in any circumstances.

Q. You were willing to subject yourself to arrest, if necessary, in order to carry out the program that you were engaged in?

A. I was willing to subject myself, yes.

Q. Without taking the time to read them, as I did to Reverend Pierson, I want you to look at the announcements contained in Exhibit "B" for identification to his testimony and tell me if there are any on there with which you disagree?

(Witness looks at instrument)

A. The first paragraph which states: "The Communist Party considers it as its historic duties to unite all workers regardless of their color against the common enemy, against the master class." I don't know if the Communist Party considers it its historic duty or not. There is no question of agreement with that. And the statement that "The Negro race must understand that capitalism means racial oppression and Communism means social and racial equality.", I don't agree with that statement. There are nine demands listed below that, and I would agree with each of those.

Q. Each of those?

A. Yes, sir.

Q. When the Communist Party stated those nine listed positions in 1928, do you think that it was the sincere desire of that party to help the Negro or do you think it was its purpose to create strife between the white and colored race, particularly in the south?

A. I really don't know.

Q. You have no opinion on that one way or the other?

A. This was six years before my birth, and I don't have that much acquaintance with the motives or intentions of the Communist Party at thattime.

Q. No, but I am sure you are a good student of history - American history and American politics? You have no opinion on that subject?

A. Well, for what it is worth, my opinion would be that although I agree with the demands, I don't --

Q. Don't you question the motives of the Communist Party?

A. I do somewhat. Yes, I do question the motive.

Q. And don't you think that that same class friction was a normal logical result of your visit to Mississippi in September of 1961?

A. It was a possible result, but it was also a possible result that the officials of Jackson, Mississippi, and the people of Jackson would come to see the wrongness of the system and realize the rightness of making efforts to change it.

Q. There had been no indication of a change after nearly 300 freedom riders had come here and had been arrested, had there, before your trip?

A. I don't know how much change. I don't have any specific knowledge that would make me know one way or another.

Q. Didn't you know from the press that the arrival of the freedom riders in Jackson, Mississippi, was creating terrific tension among the people of this city?

A. From the newspapers, as far as I could tell, this was true, yes.

Q. Didn't you realize that your trip would merely add to that tension?

A. I didn't believe or think or realize that it would merely add to the tension. In the first place, if tension has a possibility of a good resolution, then tension in itself is not a bad thing.

Q. And yet you realized that same tension might lead to violence or bloodshed, didn't you?

A. It might, yes.

Q. You have heard Reverend Pierson describe what the officers said and what you all said and what happened in the bus station. Do you adopt his testimony with respect to those?

A. Yes.

Q. Reverend, do you take the position that the defendant, Judge Spencer, acted in concert or conspired with the other defendants, the police officers, to bring about your arrest?

A. I only know that the relationship between the judgment rendered and the evidence given at my trial led me to believe that something had occurred that was not apparent in the trial in order for such a decision to have been reached.

Q. Do you have any evidence of any meeting, plan or arrangement by and between Judge Spencer and any of the other defendants prior to your arrest?

A. I believe Judge Spencer referred, in making his decision, to some - I don't know very specifically, but some sort of agreement that had been made. I think he referred to when the first bus rides came into Alabama or something of the sort. Some agreement that had been made that how people who were not natives of Mississippi would be dealt with, and my impression was that there was some general agreement that applied to our specific case, the nature of which I am not certain.

Q. The agreement that you refer to was supposed to be an agreement between whom?

A. I don't know. It was - As I recall the statement, it had to do with the officials in some general sense, but I don't know specifically.

Q. Do you have any evidence that Judge Spencer intentionally wrongfully brought about your arrest?

A. No.

Q. Do you have any evidence, other than what took place at the trial itself, that Judge Spencer intentionally wrongfully convicted you?

A. Other than what took place at the trial, no.

Q. Did you ask for a jury trial?

A. No, I didn't.

Q. Did your attorneys in your presence ask for a jury trial?

A. I don't believe so.

Q. Are there any conditions which you would consider racial discriminations existing within the physical boundaries of your home parish?

A. Oh, yes.

Q. Don't you think it would have been more appropriate for you to devote your energies to correcting any discrimination which existed in your home parish rather than going on a crusade to Jackson, Mississippi.

A. That's a difficult question. I am afraid that I can't accept the language of that question. I did not feel that my participation in the prayer pilgrimage was unconnected with racial discrimination, as I meet it in my own parish, partly because a number of the people in my parish come originally from the southern part of the United States, and we certainly were aware of what was going on in the church and in the community both south and north, and I think that understanding has clearly indicated that they understood what I was doing was very closely related to their lives.

Q. You felt by coming to Jackson, Mississippi, and defying the police orders of that city and getting yourself arrested, would help the racial discrimination condition in your own home parish?

A. I felt that my participation in the pilgrimage was a part of the whole picture, both national and local, as it affects my parish, yes.

Q. You could have found it equally exciting to go out in some of your white neighborhoods in Massachusetts and do a little block-busting out there?

BY MR. RACHLIN:

May I note my objection for the record, please.

A. I wasn't looking for excitement.

BY MR. WATKINS:

Q. Do you have any written communications in your possession issued by ESCRU in connection with the pilgrimage?

A. Any written communications? No.

Q. Does your church operate or have a separate but equal parish system in both the north and in the south?

A. It suffers under such a system, yes.

Q. And have you forceably attempted to change that system in any church, and by frceably, I mean do it contrary to the superior officer's desires in that particular church?

A. I have made any number of various efforts to change the effects of that system in churcher. To my knowledge — although my knowledge is not complete in this — To my knowledge not against the wishes of anyone in charge of a particular congregation.

Q. In other words, you have never defied the orders of your superior or any priest in charge of any particular church in your efforts to integrate any particular facility of your church, have you?

A. No.

Q. And would the same be true with respect to any efforts you might have participated in to integrate residential areas or housing?

A. No, I don't believe I have.

Q. Would the same be true with your efforts to integrate any schools operated under the supervision of your church?

A. That would be true. In none of these cases have my efforts in these met with explicit orders which would require either my compliance or defiance.

Q. As to the balance of the questions that I asked Reverend Pierson, other than those which applied to him personally, I understand you are willing to adopt his testimony as your own?

A. I believe - What was the general —

Q. Except for questions which applied personally to him and him alone. In other words, with reference to this trip, the reasons for it and what you did, and what happened, so you adopt his testimony as your own?

A. Yes.

BY MR. WATKINS:

I believe that's all.

I have read my testimony as set out on the foregoing pages and the same is correct.

STATE OF ____________________

COUNTY OF ____________________

____
James P. Breeden

SWORN TO AND SUBSCRIBED BEFORE ME, this _____ day of ____________________, 1963.

____
Notary Public

I, Mildred A. Baker, Notary Public in and for Hinds County, Mississippi, certify that to the best of my skill and ability, I reported in shorthand and on tape recorder all the questions askad and the answers made by the parties stated in the foregoing matter, and that the foregoing is a full, true and correct transcript of the testimony so taken pursuant to the stipulation heretofore set out.

This _____ day of Mach, 1963.

Mildred A. Baker

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

APPEARANCES:
CARL RACHLIN, ESQ.
280 Broadway
New York, New York,
ATTORNEY FOR PLAINTIFFS

E. W. STENNETT, ESQ. and
THOS. H. WATKINS, ESQ.
Jackson, Mississippi,
ATTORNEYS FOR DEFENDANTS

DEPOSITION OF JOHN B. MORRIS
Jackson, Mississippi
February 15, 1963

BE IT REMEMBERED that the depositions of the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., as adverse parties were taken by the defendants in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above styled and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 8:00 a.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action on January 15, 1963, and pursuant to the following additional stipulation, to-wit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the plaintiffs may be taken before Mildred A. Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of said depositions, same shall be presented to one counsel of record for each of the parties and thereafter to each of the

plaintiffs for reading and signature, which signature and verification may be had before any notary public or other officer qualified to administer oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party reserves the right to object to otherwise inadmissible matters elicited in the course of the depositions.

APPROVED:

Carl Rachlin /s/
Of Counsel for Plaintiffs

APPROVED:

Thos. H. Watkins /s/
Of Counsel for Defendants

JOHN B. MORRIS

having been first duly sworn, testified as follows:

BY MR. WATKINS:

Q. Please state your full name?

A. John Burnett Morris.

Q. How do you spell the --

A. B-u-r-n-e-t-t.

Q. Your age?

A. 33.

Q. The extent of your education?

A. Secondary schools; Bachelor of Arts; Bachelor of Divinity.

Q. Where did you get your Bachelor of Arts and Bachelor of Divinity?

A. Bachelor of Arts, Columbia College. Bachelor of Divinity, Virginia Theological Seminary.

Q. And when did you get your Bachelor of Divinity?

A. 1954.

Q. Are you married?

A. That's right.

Q. Please state your wife's maiden name?

A. Harriet Barnes Pratt.

Q. Do you have children?

A. Three.

Q. Please give their ages?

A. Ann, 8; Christopher, 7; Burnett, 4.

Q. Are you an Episcopal minister?

A. That's correct.

Q. Please give me the churches you've served, together with the dates?

A. I have served in one curia within parochial ministry, from 1954 to 1958, St. Barnabas Church, Dillon, South Carolina. During which time in '57 and '58, I assisted in starting a new mission at a nearby town, Latta, South Carolina. Since 1960, I have been the Executive Director of the Episcopal Society for Cultural and Racial Unity.

Q. Is that known as ESCRU?

A. The letters when put together provide that, yes.

Q. Do you not refer to it as that?

A. I didn't begin referring to it as that, but it is commonly now called that, yes.

Q. Tell us what ESCRU is?

A. It is one of many voluntary societies within the Episcopal Church, working for various concerns -- in this case, for a concern that the church become more nearly in practice, what it in theory and pronouncement says that itself is, namely, a fellowship where racial and cultural differences do not determine the make-up of the church. In other words, we are concerned for desegregation within the church. What we would put in more positive terms, we are concerned for realizing the inclusive nature of the church.

Q. And do your desegregation interests extend beyond the church itself?

A. We are concerned primarily for the church in its own life, and secondarily, but very importantly also, for the role of the church as a moral voice and influence within the greater community in which it is found, in the nation, in the state, and in the community, and in the neighborhood.

Q. And by the "greater community", what are the boundaries of that - the world?

A. Yes.

Q. Is ESCRU an official body or organ of the church?

A. No, it is not. I indicate, it is one of many voluntary societies within the church.

Q. Then, it has no right to speak for the church as such?

A. We have never claimed to speak for the Episcopal Church as such.

Q. Was this pilgrimage your idea?

A. No. It was the idea of a number of people and it wasn't even initially mine.

Q. Whose idea was it?

A. As it finally -- was determined, in advance of the itinerary, it was the idea of many people. I could not -- I would have to list society members.

Q. Who was the first person you remember suggesting it?

A. It was in Richmond, Virginia in -- sometime in June, where this was suggested in a group meeting.

Q. And at that time the freedom ride invasion of Jackson was in full bloom, wasn't it?

A. I cannot remember clearly, but most likely it was.

Q. You did follow that in the press, didn't you?

A. Yes, I did.

Q. It started in April and lasted through September, didn't it?

A. I guess we were some of the last arrested on these same charges. So then, we were arrested in September. I am not sure when it started -- we have been over that here earlier though, you mentioned Alabama.

Q. It followed a pattern, didn't it? From the time they first came into Mississippi, and until your group and maybe a group after you was the last, the pattern was all the same, wasn't it?

A. No, I don't think it was, because we were entirely -- we were not a freedom ride. We were an entirely different group with a different purpose.

Q. How did your purpose differ from that of the freedom riders?

A. We were concerned for the church.

Q. Well, you weren't acting for the church?

A. No, we were not acting officially for the Protestant Episcopal Church in the United States of America. Remember now, we say church -- there are many levels, and so I have answered you in terms of the official name for our national denomination.

Q. Had the church, as such, expressed any interest in the freedom ride crusade, or had the church officially suggested that your organization send a group to Jackson, also?

A. We did not send a group to Jackson. We assembled in New Orleans to cover a complete itinerary, taking us to Detroit. The Episcopal Church in its national official being, which could only be represented through the House of Bishops of the General Convention, had not met over this period, so they were in no position to suggest one way or the other. The teaching of the church has long since been consistently concerned with the questions that the freedom riders were concerned with, and the questions that we were concerned with.

Q. Did you personally approve of the activities and apparent purposes of the freedom riders?

A. I personally approved, generally, with the same qualifying concerns in some instances. As Father Jones indicated, where -- where there was some people who were involved -- were involved allegedly -- who, perhaps, should not have been. I did not ever imagine this to be any but a small portion of those who were involved in the freedom rides.

Q. If the activities and purposes of a group are correct, both civilly and spiritually, does it make any difference to you whether the individuals involved are good or bad?

A. Yes.

Q. Then you, like Reverend Jones, approved of what they were doing but you didn't approve of some of the people who were doing it, is that right?

A. We don't necessarily approve. If there were such a thing, maybe there was, of a one man freedom ride, and that one man in this case was one of the alleged misfits emotionally in life, I would not have approved of that one man freedom ride, even though -- I might, generally, have approved of the freedom ride.

Q. If you are in disagreement, Reverend, with the attitude of a community -- let's assume that you consider the activities of that community as illegal and unconstitutional, do you approve of sending so many, or trying to send so many, individuals in to defy that community so as to try to physically overflow the jails of the community?

A. I don't see that this, in itself -- only this -- I can't -- if this has to do with my endorsement of the freedom riders, I would endorse them for many reasons. When it became a matter of considering specific strategies they had involved, I would have to know each instance.

Q. Let me make my question a little clearer. Assuming that you approve of the purposes for which a good group of freedom riders came to Jackson to test the validity and the legality and constitutionality of what the people of Jackson and maybe the police force were doing, assuming you approved of that, don't you think the proper method was to take those first test cases through the courts to decide that issue, and not try to flood a town with so many people that it would be physically impossible to jail all of them?

A. I understand what you are asking and I have -- I could imagine feeling both ways -- either way in regard to a specific situation, and I have known some, I believe, where I have felt, in the direct action movement, that the massive approach was ill-timed; and I would have said, as you indicated there, take this one case up. On the other hand, there might be an occasion where the intransigent obstinacy of the community was so apparent -- that protest in numbers might be warranted. Now, we are speaking here about something which I have not been directly involved in, but only have read the newspapers, as you.

Q. I see. You recognize the fact that the massive approach was being applied to Jackson, in that groups were forming all over the United States for the purpose of coming to Jackson, Mississippi, as freedom riders. You knew that?

A. Well, how many were arrested, oh, 200 and something --

Q. Over 300 --

A. 300 -- well 200 and something freedom riders and then ourselves. You could have probably -- I don't know whether it was massive or not. I don't know what your jail accommodations are.

Q. I can assure you it was massive --

A. Yes.

Q. Realizing that some 200 odd had come before you, and that those cases were in the process of going through the courts as test cases, don't you think it was ill-timed and ill-taste for fifteen Episcopal ministers to join that group?

A. This was the same thing that Father Jones was dealing with, about beating your wife, or, however, he puts it. We were not freedom riders. Our concern was with the church.

Q. I realize you don't call yourselves freedom riders, but, by the same token, I must ask you if your activity wasn't almost identical with the freedom riders. And if Redbook magazine hadn't referred to Reverend Pierson specifically, and all of you in the group, as freedom riders; and, so far as I know, publically none of you have challenged that description.

A. Well, I didn't know that Redbook was the predominate voice in public opinion. Actually, of course, there was an article that came out much later. We have clearly defined our role and purpose as is quoted in that statement -- as you submitted, as being one with the church, with an itinerary of a beginning and an end, that never had to involve our sojourn in Jackson.

Q. That's the strange thing about this whole procedure, your itinerary or your purpose, as outlined in Exhibit "A" to Reverend Pierson's deposition, not only doesn't mention the freedom ride crusades, it doesn't mention Jackson, Mississippi, and doesn't mention an attempt to integrate or bring about the integration of any specific facility, but refers only to private church, schools and churches, and living areas.

BY MR. RACHLIN:

Is that a question, Mr. Watkins, I am not sure?

BY MR. WATKINS:

No, I am not through.

Q. — Now, I don't think it's any secret from what all you men are saying that you had a very definite purpose in coming to Jackson to test the very thing the freedom riders were testing. Now, if that was one of your purposes, why wasn't it mentioned in your itinerary, and I am assuming for the purpose of this question, that you prepared that message?

A. Just a moment, now, you have asked me several things. Do you want to deal with the message?

Q. Yes. Let's deal with the message.

A. This is the statement that essentially — and I have already noticed one error -- this is essentially the statement that was drafted by the group in New Orleans that evening when we gathered at the Dryades Street YMCA. And we spent the much greater part of that evening together, working on and drafting this. I had prepared a proposed draft of our message to the General Convention, that I had sent the 28th or 27th, in advance. That -- all men are of independent and free will and -- they considerably altered my statement and this came out of the group there that night.

Q. And that's the result of their altering your statement?

A. Yes. Now, there was one error --

Q. Do you have a copy of your original statement?

A. I have it within a leaflet here, yes. I notice one error here -- it is a very insignificant one, actually -- but it is "Clerical appointments", where are we now. They have a phrase here that didn't wind up in our final version. "Clerical appointments reflect the fact that we have made parish life an adjunct to racial separation in the community." That's the only one I noticed when you were reading it earlier. I have not compared them. But I am not crueling over that point, except to say that maybe this needs to be -- we have to check it carefully.

Q. May I have a copy of the official one that you have in your hand?

A. I expect you can. It includes another statement, also.

Q. Well, that's all right. I won't mind that. Does it deal with pilgrimage?

A. It deals with the statement that those of us who were illegally and wrongfully incarcerated prepared -- as a result -- after this.

BY MR. RACHLIN:

I have no objection. I just want to point out there is some scribbling at the bottom which is not part of it -- I have no objection to our offering that to Mr. Watkins for whatever use he --

BY MR. WATKINS:

I want to make it an exhibit .

BY MR. RACHLIN:

I have no objection to that either.

BY MR. WATKINS:

We would like to make this statement as explained by you, Exhibit "1" to Reverend Morris' deposition.

(Off the record discussion)

(Exhibit so marked)

Q. Do you have with you copies of any other literature issued by ESCRU or you in connection with the pilgrimage?

A. No, I don't.

Q. After this lawsuit was filed, wasn't there a letter or message of some kind directed by you four plaintiffs or by ESCRU to the local churches explaining the reason for your filing the lawsuit?

A. We made a statement at the time of the filing of the lawsuit. It was not sent out extensively.

Q. Well, it was sent to some churches here in Mississippi, wasn't it?

A. I don't think so. I am not frankly sure. I am not honestly sure what was done with it. The statement that was made with --

Q. Do you have that statement?

A. No, I don't.

Q. Is it in writing?

A. Yes, sir, it is.

Q. Is that the statement that is included in this pamphlet?

A. No, no.

Q. With reference to the details of your trip -- what happened after you reached Jackson, your visit to Tougaloo, your visit to the school in Louisiana -- are you willing to adopt the testimony of Reverend Pierson, Reverend Breeden and Reverend Jones as to the procedure?

A. As they were each talking, and with a lessening degree, I made notes of clarifying things -- that I would like, I think, read into the record.

Q. Please do so.

A. -- And I won't -- if this is pursuant to your question and therefore refers us back to their testimony, if I would just make comments, or if you think I need be more complete.

Q. That will be perfectly all right.

A. One is that for instance -- I want to go over them -- procedurally. I have just explained this and that is one of the things I have here.

BY MR. RACHLIN:

This referring to --

BY MR. WATKINS:

-- Exhibit "A".

A. Actually, to censor Father Pierson's statement, I have to -- I have already said that. Am I supposed to say it now under what he has just said. Does it all go together?

BY MR. RACHLIN:

If it is already clear, then no.

BY MR. WATKINS:

Anything you have already said you need not repeat.

A. Oh, okay.

Q. But go right ahead.

A. All right. All the schools we visited are Episcopal schools and are not attended, or were not at the time attended, by members of both races. It is St. Martin's School at Metairie, Louisiana. These were notes made when Father Pierson was speaking and may -- some of them may have been answered. I will just have to go through them. While those of us who were then jailed did not go to further schools, they were on the itinerary. Father Jones has mentioned them. They were then visited by others in our group. Martin Luther King, Jr. was not present in New Orleans. I certainly did not "anticipate" in quotes, the word "anticipate" in quptes, violence. Bishops of the Episcopal Church were advised of our plans.

Q. All of them?

A. All had received something on this, yes.

Q. What?

A. A letter saying where we were going and actually it sent along a copy of the proposed draft, which theologically is essentially this, although they changed it all around.

Q. Do you have that letter?

A. No, I don't. I do not know who James R. Salter is or was, and I do not believe such a person had been present at our gathering that evening at Tougaloo. James McCain, whom I met once, was not at the New Orleans gathering, nor was Mr. Gaither. To my knowledge we did not see -- I did not see Mr. Gaither until after we were arrested. I don't know whether it was in the jail or when we got out of the jail. It is a misinterpretation, based on a news story, I believe, about something that the Reverend Lee Belford said in a conversation with the Mayor of Jackson, that has been brought up here; and talking with him later, I understood that he had simply indicated that christians must always stand for the principles for which they stand, even if it meant that suffering or violence would follow. He did not in any wise advocate or welcome the idea of bloodshed.

(Off the record discussion)

Q. Were their descriptions of the New Orleans meeting accurate?

A. Generally so, I think. Let me hasten along here and see if I can't go a little faster. I do believe Judge Spencer to have intentionally, falsely convicted and imprisoned me. And believe that he --

Q. And by that do you mean --

A. You want me to go through all this and then come back to it?

Q. Let me stop you once in a while. By that do you mean that you are of the opinion that he wrongfully convicted you knowing that he was committing a wrongful act?

A. I do believe that to be possible.

Q. Well, possible is one thing. Do you have any evidence of that?

A. I have no substantial evidence, only circumstantial evidence and what I suspect to be so, based on things that have already been brought out, and as Father Jones said, not only the apparent acting in concert on the arrest and then proceeded the conviction, which seemed like a foregone conclusion. The fact that two churchmen knew the article - Article 37, had the prayer book there, both referred to the same thing. I -- well.

Q. You mentioned apparent concert on arrest, what do you have in mind?

A. The statement that I did not hear myself, but I know

Father Jones heard it, "Shall we get them now or later". The statements made later, as has been referred to here, "We expected you earlier, where were you".

Q. Well, where is your evidence linking the defendant Spencer with anything the police officers did or said at the time of your arrest?

A. If the word "circumstantial" is correct, I am not a lawyer, it would seem there was a complete plan amongst the power structure of the City of Jackson, which was brought to bear against us — and precluded objective consideration on the bench of the merits of our case, so that even we were acquitted later as having been wrongfully arrested.

Q. What do you mean by "the power structure of the City of Jackson"?

A. Well, this would include the Mayor and the Police Chief and the City Council and the people who tend to have influence as regard to public policy.

Q. And are you testifying here, under oath, that all of those people got together and conspired in advance to arrest you and convict you?

A. Now, when I use "the power structure", that's a broad term -- and I can only say that I suspect that there was some conspiracy which did involve Judge Spencer.

Q. And you have nothing to predicate that on but the suspicions growing out of what you detailed?

A. Very strong suspicions and the fact that other persons were arrested on no more grounds than we. The fact that we were also proven to be innocent by the Hinds County Court.

Q. Do you have anything else on your list you want to mention?

A. It was at the request of we four plaintiffs that the Society duly decided to assist we four, financially, in the expenditures necessary for pursuing this suit. It was our individual choice and decision and determination at the outset -- Oh, I can believe that Negroes withdrew from Jackson churches, but I could also believe that they were not wanted. Bishop Allen, now Bishop Allen, did -- then rector of All Saints Junior College -- did encourage us not to come to All Saints, but we went anyway. He indicated he would receive us and he did, although he was -- regretted that we came -- went. I have never seen that exhibit that had to do with some statement of the Communist Party -- but would strongly suspect and be in doubt of their motives and, therefore, would even question the veracity in making the claims that they might make that I might agree with, while there are others I wouldn't agree with, and would be thoroughly against the Communist Party, as against all subversive groups, such as the Citizens Council and the Ku Klux Klan and others, that would tend to subvert and seek to overthrow the United States Federal Government. One minor point on the bus. It was never actually chartered to Detroit. I discussed with Greyhound chartering it through, but for reasons that have been mentioned, the actual contract that we then signed with them was to Jackson, with plans to take regularly scheduled conveyances hence.

Q. Let me ask you this question about the Jackson bus station. When you went to the bus station were you accompanied or met there by any other ministers other than the fifteen in the group that were arrested?

A. We were not accompanied to the bus station by any other ministers. We went fifteen of us in three different taxis, carrying five each.

Q. When you got there were there any other ministers whom you knew present in the bus station that were not in your group of fifteen?

A. I did not see them to know whether they were actually there, but two of our group were there that had gone on their own means.

Q. And went in plain clothes, didn't they? And by that I mean without clerical garb?

A. I believe that's correct.

Q. Who were those two?

A. The Reverend Malcolm Boyd and the Reverend Layton Zimmer.

Q. And where did they -- did they go from Tougaloo to the station?

A. I imagine so.

BY MR. RACHLIN:

Well, don't guess. I mean were they or --

BY MR. WATKINS:

Q. Were they at Tougaloo with you?

A. They had been at Tougaloo with us that morning.

Q. Then obviously they went from Tougaloo to the station, didn't they?

A. Right.

Q. How did they happen not to accompany you in your group?

A. They were part of the group that was going to stay in Jackson and call on church leaders, clergy and lay leaders.

Q. So, they did not want to be arrested and put in jail?

A. Neither did we.

Q. Their not joining your group was pretty good insurance against being arrested, wasn't it?

A. They might have been arrested any time for anything, in this kind of city, with this kind of law enforcement.

Q. Were they arrested?

A. No.

Q. Why did they appear there at the same time you did at the bus station and out of their clerical clothes?

A. They came to see us off.

Q. Did you talk to them at the station?

A. We had no time to. We undoubtedly would have, had we had our lunch and were about to board our bus, we obviously would have said good-bye to them; but as it turned out, the gentlemen here were rather quick to encircle us.

Q. Now, to be perfectly frank, didn't they go to the bus station as observers of your arrest?

A. We did not expect to be arrested and we had hoped we would not be. We heard that this had happened with others, but we genuinely felt that we might be fed.

Q. Didn't they go to the bus station to observe the events if you were arrested?

A. No, they went to see us off -- because this was -- our hopes and prayers.

Q. Did you see them there?

A. I did not.

Q. How did you know they were there?

A. Because they told me later what it looked like for fifteen quiet clergy, not bothering anyone, to be arrested in a situation where there was no crowd, only fifteen or twenty people, and no threatening mob, no angry mood, and yet, we were considered to be the guilty ones by the police officers.

Q. Where were they when they observed that?

A. I don't know. They were in the terminal somewhere.

Q. They didn't tell you where?

A. I don't frankly remember. But they said they were sitting on the bench or standing, I don't know.

Q. How did they get to the terminal?

A. I don't know that.

Q. Were there any people from Tougaloo who came to the station to watch the event?

A. I don't know what you mean by "watching the event". I don't know -- they did not tell me later that they had anyone with them from Tougaloo.

Q. Did they tell you in advance that people were going from Tougaloo? Nobody mentioned that at Tougaloo?

A. I don't know that anybody from Tougaloo was there.

Q. It wasn't mentioned at Tougaloo?

A. What wasn't mentioned at Tougaloo?

Q. Whether any teachers or students at Tougaloo were going to accompany you to the station or be there at the station?

A. We were not -- except for meeting the President and some of the faculty the night before, we were not greatly involved with the folks at Tougaloo, except to enjoy their gracious hospitality. And I don't know of any -- plan that was either had or was carried out that involved any Tougaloo people coming down to see us off.

Q. Then, there were no more than the two observers that you have mentioned?

A. Those two who had come to see us off.

Q. The result was that they observed it and that was all. Did they see you off in the paddy wagon?

A. I don't remember. I don't know.

Q. They didn't come to say good-by to you as you were leaving in the paddy wagon?

A. I guess they really didn't know how far Mississippi justice would extend and accomplish their possible arrest.

Q. In other words, they were afraid to let it even be known that they knew you?

A. Perhaps they were. Peter was afraid to be known by Christ at one time.

Q. Now, these police officers asked you to move out of the station more than one time, didn't they?

A. Yes.

Q. You thought you had a legal right to stay where you were and you refused to obey that order, didn't you?

A. We were hungry. We had had breakfast early that morning. We had a bus shortly after 12:00. We had time there for a sandwich, and we did not decide to refuse to obey the order. We decided that we were hungry and we were interstate travelers and we couldn't understand these policemen telling us to move on and move out, when we were just minding our own business and going to have a sandwich.

Q. The result was though that you did refuse to obey the order, wasn't it?

A. We did not obey their order to move out --

Q. That's all I asked you --

A. I submit this under the same category of answers that Father Jones spoke to --

Q. That's all in the world I asked you, whether you obeyed their order?

A. No, and I would not have done a lot of other things if a policeman had told me to do it, that I knew were illegal or wrong or would harm -- would jump off a bridge or hurt me or all these things, so I don't necessarily consider the word of a policeman to be sovereign.

Q. You wre placing your judgment above that of the police as to the legality of their order?

A. It seemed that Judge Moore agreed with us.

Q. Well, be that as it may, on that occasion you placed your judgment above that of the police in deciding the legality of his order.

A. No, we didn't try to take their badges off or anything like that. Nor did we disrespect their judicial -- their position as law enforcement officers. We did not spit on their badges. We did not say "You are not a policeman". We respectfully stood there quietly, neither doing that which they said to do, nor showing disregard for their office as Jackson policemen.

Q. You have made several references to the fact that your cases were dismissed in Judge Moore's court —

A. Not dismissed, acquitted. Directed verdict of acquittal. We were found innocent of the charges. You know, he first was going to dismiss out of respect for the church, which would have been an awful thing for the prestige of the court, and then he didn't do that; and later on, in May, did actually acquit us, which was a much finer thing for the court to do and certainly helped to preserve its integrity.

Q. When he earlier let it be known that he was considering dismissing the suits against you ministers, you all objected to that, didn't you?

A. No, how could we object to it. We had no choice in the matter. We simply came back and — the following day, and had no basis for objecting to it — his dismissing us. We could not hand him back the dismissal.

Q. I thought you had just said that if he had dismissed them out of respect for the clergy, that that would have been a terrible thing?

A. It would have been. But we were not objecting in the sense that we were trying to "turn in the meal ticket", if you will. We came back to express a genuine concern for other people who at the time of arrest were no more guilty than we.

Q. Were you present when they were arrested?

A. No, we read it in the newspapers.

Q. Did the same persons testify in Judge Moore's court as testified in Judge Spencer's court?

A. The same persons in Judge Moore's as in Judge Spencer's. No, not in our case; and let me see, for the police officers, I don't think so, because I think Captain Ray testified in Judge Spencer's court and one of the police officers testified in the other.

Q. So, it was to that extent entirely different evidence in the two courts, wasn't it?

A. I don't think the evidence was any different. I just think the two judges saw it differently.

Q. But different witnesses testified, you will go that far, won't you?

A. Yes. But they all had good eyes and saw things about the same.

Q. Did you testify in your own defense, on your own behalf, in Judge Spencer's court?

A. No.

Q. Did you ask for a jury?

A. No. I didn't know we had that privilege. I --

Q. You had Jackson and New York counsel present, didn't you?

A. Yes, we did. I recall, frankly, vaguely -- so you may not find this admissible -- of Attorney Young asking, or someone else asking "Will there be a jury", and being advised that "No, there won't". We were not at any point asked "Would you like a jury?"

Q. Who did Young ask whether there would be a jury?

A. I didn't say Young asked this. I said I had this vague recollection, probably while we were in jail and Attorney Young must have come to see us, of someone asking him "Will there be a jury?" But either his answer or some report that came precluded this possibility apparently, so I never raised the question.

Q. Did you ask either your Attorney Jack Young or Mr. Rachlin whether you were entitled to a jury on request. If you requested it?

A. I did not ask Mr. Rachlin, I am sure, and, as I have indicated, I am not sufficiently clear on this factor with

Attorney Young.

Q. Are there areas in your home town of Atlanta where what you consider discrimination between the races exists?

A. Oh, yes. Have you read about our wall?

Q. Yes, I have read about that. Did that situation in more than one form exist in September of '61?

A. Oh, yes, more so. We have moved ahead really, excepting the wall.

Q. Well, if you were interested in improving, straightening out, separation problems, don't you think you could have better spent your time on that in Atlanta than to come to Jackson, Mississippi and do it?

A. I think we are all involved in one another. I am an American first -- christian first, and an American next, then I am a southerner. And I am concerned for things in Mississippi just as well as I am concerned for things in Georgia.

Q. I certainly agree with those sentiments, but I have a feeling that before I go to make my neighbor clean up his own backyard, I would clean up my own.

BY MR. RACHLIN:

I didn't mean to interrupt, but I couldn't hear the question.

BY MR. WATKINS:

Q. All right. Yes, I agreewith your sentiments expressed. But I have a feeling that a christian should interest himself first in the trash in his own backyard --

A. Yes --

Q. -- before attempting to point out the trash in his neighbor's backyard.

A. I think I would agree with you. But there is a certain primacy of concern. I have been interested in things in Atlanta. But I wouldn't make the mutual exclusive. You see, I wouldn't say that we could really get that backyard in Atlanta dusted thoroughly clean before we worry about our brothers in Mississippi or New York or some other place.

Q. Have you ever crusaded in Georgia before you crusaded in Mississippi?

A. I don't know what a crusade is, so you will have to ask it in some other way. I mean, in one sense there are crusades from christian history and -- the whole christian gospel is sort of a crusade for the conversion of people in Mississippi and New York.

Q, Isn't that what you came into Mississippi to do?

A. For what?

Q. Conversion of people.

A. Well, I am sure you have lots of people here that need to be converted, but we have got them in Atlanta too, so I --

Q. That get's back to my point, wasn't there enough to do to keep you in Atlanta?

A. Well, you see, my job -- actually, I travel all over the country -- fifty states -- is my specific responsibility. I am paid to do. So I would be neglecting my appointed task if I only stayed in Atlanta.

Q. Please don't misunderstand me. We are always glad to have you, I think, in Jackson. Certainly I am, personally, and I am sure everybody would, if you would have come in any role other than a person very similar to a freedom rider.

A. Well, I thank you, sir, and you are always welcome in Georgia, too. And some day we will show these Yankees up north how really we can probably work this out better. But you and I might disagree on what that means.

Q. Anybody got a Confederate flag we could wave?

A. Well, you see, I substitute supremacy theories. White supremacy, I substitute for southern supremacy, white and Negro. Southern, I think, is superior. I don't know whether that will help the record.

BY MR. WATKINS:

I believe that's all.

I have read my testimony as set out on the foregoing pages and same is correct.

____
John B. Morris

STATE OF _______________

COUNTY OF ______________

SWORN TO AND SUBSCRIBED before me, this _____ day of March, 1963.

____
Notary Public

I, Ruby G. Ladnier, Notary Public in and for Hinds County, Mississippi, certify that to the best of my skill and ability, I reported in shorthand and on tape recorder all the questions asked and the answers made by the parties stated in the foregoing matter, and that the foregoing is a full, true and correct transcript of the testimony so taken pursuant to the stipulation heretofore set out.

This 11th day of March, 1963.

Ruby G. Ladnier
Ruby G. Ladnier

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

APPEARANCES: CARL RACHLIN, ESQ.
280 Broadway
New York, New York
ATTORNEY FOR PLAINTIFFS

E. W. STENNETT, ESQ. and
THOS. H. WATKINS, ESQ.
Jackson, Mississippi,
ATTORNEYS FOR DEFENDANTS

DEPOSITION OF J. D. GRIFFITH
Jackson, Mississippi
February 15, 1963

BE IT REMEMBERED that the depositions of the defendants, J. L. Ray, J. O. Griffith, D. A. Nichols, and James L. Spencer, as adverse parties were taken by the plaintiffs in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above styled and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 1:00 p.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action and pursuant to the following additional stipulation, to-wit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the defendants be taken before Mildred A. Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of said depositions, same shall be presented to one counsel of record for each of the parties and thereafter to each of the defendants for reading and signature, which signature and verification may be had before any notary public or other officer qualified to administer

oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party reserves the right to object to otherwise inadmissible matters elicited in the course of the depositions.

APPROVED:

Carl Rachlin /s/
Of Counsel for Plaintiffs

APPROVED;

Thos. H. Watkins /s/
Of Counsel for Defendants

J. D. GRIFFITH,

having been first duly sworn, testified as follows:

BY MR. RACHLIN:

Q. Officer, do you mind telling us your name?

A. Joseph David Griffith.

Q. Where is your residence, sir?

A. 710 Primos Avenue, Jackson, Mississippi.

Q. And I take it you are a member of the Jackson City Police force?

A. Yes, sir.

Q. And for how long a period of time have you been such a member?

A. Three years.

Q. Three years. Do you mind for record purposes telling us what your rank is?

A. Patrolman.

Q. And on September 13, 1961, were you likewise a patrolman?

A. Yes, sir.

Q. I ask you to call to your mind the events of September 13, 1961. By the way, are you one of the defendants in this proceeding?

A. Yes.

Q. At or about 11:30 on September 13, 1961, were you stationed at any particular place in the city of Jackson?

A. I was.

Q. Will you tell us where that was, please?

A. Trailways bus terminal, working my eight hours tour duty.

Q. Do you recall about what time it was you went on duty at the Trailways bus station that day?

A. 7:00 a.m.

Q. 7:00 a.m.?

A. Yes, sir.

Q. Were you alone or was there any other officer or officers with you?

A. I was alone when I first went on.

Q. Did there come a time when somebody else joined you?

A. I believe it was around 9:00 or 9:30 officer Nichols came down.

Q. That is, pointing, indicating officer Nichols, one of the other defendants in this proceeding?

A. Yes.

Q. Now, was that a regular station of yours at the Trailways bus station?

A. Yes.

Q. How long a period of time had you been stationed at the Trailways bus station?

A. Approximately three weeks prior to September 13.

Q. Now, do you recall about what time it was when you first saw the fifteen Episcopal clergymen who were later arrested?

A. Around 11:25.

Q. 11:25. At the time you first saw them were you and officer Nichols standing together?

A. Yes, sir.

Q. Can you tell us where in the station you were standing?

A. We were standing on the ramp in the back of the station which is on the south side, and we were standing on the east end of the ramp.

Q. Now, how close would that be to Pascagoula Street?

A. Oh, 50 - 60 yards.

Q. And how close would that be to the Pascagoula entrance to the station?

A. About the same.

Q. Are you saying that from one side of the station to the other, it is 50 or 60 yards? I am not sure I understand you.

A. Oh, you mean where we was standing. You asked me first how far it was to Pascagoula Street.

Q. Yes.

A. That was approximately 50 or 60 yards.

Q. Were you inside the station at the time or outside?

A. Outside.

Q. On the south side of the station, is that right?

A. Yes.

Q. Now, Pascagoula Street is the north side of the station?

A. Yes.

Q. I see. Well, what were they doing when you first saw them?

A. Well, we noticed three cabs pull up in the driveway at the east end of the building --

Q. Uh-huh.

A. And fifteen ministers got out and started walking towards the front of the building.

Q. I see.

A. Officer Nichols and myself proceeded through the back door.

Q. That's on the south side of the building?

A. Yes, where we went in.

Q. And you walked across the building?

A. About half way across the back ramp. Oh, not — about a third of the way, I guess —

Q. Uh-huh.

A. Where the sliding - swinging door is.

Q. How close were you — did you see them enter the building?

A. We saw them when they came in the front door.

Q. Can you tell us what door they entered through?

A. The front door — the north side.

Q. There are several sliding - swinging doors, aren't there?

A. I am not sure which one they came through.

Q. Would you, if I mentioned that it was the one nearest the east end of the building? Does that refresh your recollection?

A. I believe it was.

Q. And you had come through the east end door on the south of the building, is that correct?

A. Yes, sir.

Q. Now, about how far did they have to walk from where their taxicabs let them out to the point of entering the building you just described?

A. Oh, 45 or 50 yards, something like that.

Q. And how far across the terminal building is it from the south side of the building to the north side of the building?

A. From south to north --

Q. Yeah, the building itself -- inside the building, in other words?

A. Oh, I would say, roughly, 25 yards.

Q. 75 feet?

A. 25 yards. Yes, sir, that's right.

Q. Yes. When they entered the building you had walked about how many feet into the building?

A. Oh, about 70.

Q. 7?

A. 70.

Q. 70. So, that you were close to the entrance where they entered, is that correct, sir?

A. Yes.

Q. Did they walk between you and the newspaper stand just to the left as you enter on the Pascagoula side?

A. Uh, one or --

Q. Do you understand what I am saying? If I am not clear, please tell me because I am not trying to mislead you.

A. Yes. Two or three of them had got by there when we got there. As we walked into the back of the building, we observed that there were, oh, maybe 12 or 15 people in the building; and as they came in the front door there was a large crowd of people followed them in there. I would estimate 25 or 30 people.

Q. 25 or 30 people followed them into the building?

A. Yes, sir.

Q. Now, did they walk -- did the clergymen walk past you, then around to the left into, toward the restaurant?

A. One or two of them got inside the doorway --

Q. Uh-huh.

A. And, I believe, I said "Hold it up a minute."

Q. By the way, was it you or was it Officer Nichols who said that, "Shall we take them now or wait 'til later?"?

A. I don't remember making a statement likethat.

Q. Well, did you hear officer Nichols make such a statement?

A. No, sir.

Q. Now, when they walked into the building, as you observed them, did they — were they speaking in very loud tones of voice?

A. No, sir.

Q. Were they — did you hear them use any improper language?

A. No.

Q. Did you see them threaten any people in the station?

A. Yes. By the manner in which they entered.

Q. What — the clergymen entered the building?

A. Yes.

Q. Well, will you describe what that manner was, please?

A. The people of the city of Jackson was in a tense mood at that time and they came in as a group, as they did, and the people in the — the other people in the Trailways bus terminal was in an ugly mood; you could hear some mumbling in their voices, expressions on their face.

Q. Now, what did they say or do which threatened anybody?

A. Uh, the ministers didn't actually make a threat. Just a —

Q. Now, you say that some people followed them into the station?

A. Yes, sir.

Q. Did you know who the people were?

A. No, sir, I didn't.

Q. Did you go over to those people and ask any of them what was their business in the station?

A. No.

Q. Did you ask any of them to leave the station?

A. No.

Q. Now, you say youdescribe those people as being in an ugly mood?

A. Yes, sir.

Q. Well, did they say anything?

A. No.

Q. These people did not say anything?

A. No.

Q. Did they have threatening gestures?

A. Yes.

Q. Did you arrest any of them?

A. No.

Q. Did you think that they were — were you afraid that those people might cause some trouble?

A. Yes, if we didn't — we had determined that the fifteen ministers were the cause of maybe — the disturbance, so it was our intention of removing them from the bus terminal.

Q. Will you please tell us, Officer Griffith, what the fifteen ministers did in your presence that was the cause of the disturbance?

A. Well, the citizens of Jackson just didn't like their presence there is one reason. Because they were in the mood that they were in.

Q. They didn't like their presence because there were whites and Negroes together?

A. That I don't know.

Q. They just didn't like their presence there?

A. That's all.

Q. Well, let me ask you this, of the fifteen did you know how many of them were Negroes?

A. I believe three of them were.

Q. And you observed that?

A. Yes.

Q. And you said a moment ago that --

A. Now, just a minute. I didn't observe that at the time that there were three niggers. This was later on after everybody was booked and everything.

Q. You — I withdraw that. Well, how did you know the people of Jackson didn't like their presence in the station?

A. Because there was so much tension in Jackson, and all the freedom riders coming in and everything.

Q. Well, you said you didn't know there were any Negroes until some later time, is that correct?

A. I knew there were some niggers in the group at the time, but didn't know how many.

Q. Could you actually see them at that moment when they came into the station?

A. Yes, sir, I noticed that.

Q. Well, what was there about their behavior that caused you to think that the people of Jackson didn't like those people in the -- the clergymen in the bus station?

A. Uh, the attitude of the people. The way they kept moving around. You could hear some mumbling in their voices.

Q. Could you hear what the people were saying?

A. No, just muttering.

Q. Well, how did you know they were muttering at the clergymen?

A. You could tell they were more or less focused on these fifteen ministers.

Q. How many people were there in the station before there was any group following the ministers into the station?

A. Oh, ten, fifteen.

Q. Now, those people who were in the station at that time - before you say the group followed them into the station, were those people there on normal business in the station?

A. Yes, as far as I know.

Q. Were those people causing any disturbance?

A. When these ministers came in almost everybody in the station got up and began to move around.

Q. Do you know why they got up and began moving around?

A. Because of the presence of these ministers, is all I know.

Q. Did any of them say anything to you?

A. No, sir.

Q. Did any of them cry out "Throw them out"?

A. No.

Q. Did any of them say "Get them out of here"?

A. No.

Q. Could you tell any words that were spoken by any of the people who were in the station at that time?

A. No.

Q. Did you ask any of the people in the station what was disturbing them?

A. No.

Q. Did you ask any of the people to leave the station?

A. No.

Q. Now, how many of the people in the station outside of the fifteen ministers -- how many of them would you say were mumbling?

A. Oh, I don't know. I just noticed maybe two or three of them mumbling, kinda saw them jabbering a little bit to each other.

Q. Two or three of them?

A. Off at a distance, something like that.

Q. About two or three. Did you think those two or three might have caused some trouble in the station?

A. Uh, well, the whole crowd seemed then in kind of an ugly mood. You could tell by the expressions on their face that they didn't like the presence of these ministers in the station, and we knew that we had to take some kind of action. So, the easiest action to take would be to remove these ministers from the station, because if we didn't, we were afraid we were going to have trouble.

Q. They told you they had bus tickets, didn't they?

A. I don't remember any of them say they had a ticket.

Q. Now, did you notice whether there were any people other than the ministers in the restaurant?

A. Yes, sir. I believe there was a few in there. How many, I don't know, because there were booths in there and some people would be sitting behind the booths.

Q. You couldn't see the people inside the restaurant then, could you?

A. When I walked over that way I could tell there was some there.

Q. But a very few, is that right?

A. Yes, sir.

Q. How many did you say there were?

A. What I could see, I would say there were three or four in there.

Q. Well, why didn't you let the ministers go into the restaurant then?

A. Because we had already determined that the ministers presence being there might cause trouble and we felt it was best to get them removed from the station.

Q. Yes. Would the trouble be caused by anything that the ministers said or did?

A. Just their presence there.

Q. Their presence there, but not anything they said or did?

A. No, they didn't say anything.

Q. The trouble would becaused by other people, is that correct?

A. Yes.

Q. Why didn't you ask the other people to leave the station, then?

A. Therewas lots more people. Why try to take on a large group when you can remove asmaller group out to preserve the peace.

Q. Now, were these ministers all in their religious clothes?

A. Yes, sir, I believe they were.

Q. Everyone of them, isn't that right? Did you seriously believe that the people of Jackson would attack the fifteen ministers?

A. Yes, I do.

Q. You did. You thought that the people of the city of Jackson would attack ministers?

A. Yes.

Q. Do you recall when the last time the people of the city of Jackson attacked ministers?

A. I don't recall an instance.

Q. Now on the -- near the Pascagoula entrance to the station where they entered, was there at that time a sign indicating that the entrance of the building -- I withdraw that. In front of the Pascagoula entrance to the bus station where they entered was there any sign indicating what people were allowed into this part of the station?

A. Yes, there is a sign up there.

Q. What did it say?

A. Colored only, which is only -- I mean, white only, normally used by whites at the bus terminal down there.

Q. Now, didn't it also say "By order of the Police Department" at that time?

A. I am not sure. It might have, I am not sure.

Q. Now, a little further east on the Pascagoula side of the station was there another sign?

A. Yes.

Q. What did that sign say?

A. Colored only. Normally used by colored in the bus terminal.

Q. So, this part of the station then was normally used by white people, is that it?

A. Yes, sir, the waiting room in the west end of the building.

Q. And the waiting room in the east end of the building —

A. Normally used by colored.

Q. I see. Now, was it you or Officer Nichols who said to them - "Move on"?

A. Officer Nichols.

Q. Did you say anything at all at that time?

A. No, sir.

Q. Then was it Officer Nichols who said to them "You are under arrest."?

A. No, I placed them under arrest.

Q. You placed them under arrest?

A. Yes, sir.

Q. Then what did you say to them at that time?

A. After they had disobeyed — you want me to go through with —

Q. Oh, yes, please do.

A. Officer Nichols ordered them to move on. I believe Mr. Morris, acting as spokesman of the group, spoke up and said

"We are not violating any law, we are interstate passengers." Officer Nichols ordered them once more to "move on" and Mr. Morris spoke up again and said "All we want to do is get something to eat and catch our bus." Officer Nichols then asked if they obeyed his orders — understood his orders —

Q. Uh-huh —

A. - and if they refused it, and they refused his orders, and I placed them under arrest.

Q. What did you do to place them under arrest?

A. I told them "You are under arrest."

Q. All fifteen?

A. Yes. And just as soon as I placed them — said "You are under arrest" —

Q. Yes —

A. — that's when Mr. Morris spoke up again and said "What charge?". I said "breach of the peace".

Q. Now, are you familiar with the breach of the peace statute?

A. I am familiar with breach of the peace, yes.

Q. What did you consider that they had done under the statute which was a violation of that statute?

A. Their presence being there and the citizens of Jackson did not like it.

Q. Their presence being there and the citizens of Jackson not liking it?

A. Yes, sir.

Q. It had nothing to do with the fact that they were a group of twelve white and three Negro clergymen?

A. No, sir.

Q. Nothing at all? Not one bit?

A. Not on our part. Now, we arrested them on breach of the peace charge, preserving the peace. As far as the citizens of Jackson -- being mad at them or in the ugly mood as they were, that might have been their version; but ours was -- objective to preserve peace and order.

Q. Well, now, the only persons or people of the city of Jackson that you saw at this time were the people who were in the bus station before and those you said who came in afterwards, is that right?

A. Yes.

Q. Where did those people who came in afterwards come from?

A. That I don't know.

Q. You don't know. Well, how long did it take them to walk from their taxicabs, where they got out, to the entrance of the building?

A. Well, it shouldn't take over three or four minutes at the most.

Q. Would you say it was less than that?

A. Yes, it could. It's according to how fast you walk.

Q. Well, how fast — you said it was about 75 yards from the taxicab to the entrance?

A. 60 — 65 yards, somewhere similar to that.

Q. Well, how long —

A. That's roughly guessing now.

Q. Well, how long does it normally take you to walk 60 or 65 yards?

A. I don't know.

Q. Well, would it take you more than a half a minute?

A. I would say, roughly, a minute or two, or something like that. If I was dragging along or really stepping it up.

Q. Well, they were walking at a normal pace, weren't they?

A. That I really don't know. I couldn't see them walk because of the wall between us and them, until they came in the front door.

Q. Now, you were — when you first saw them, you were on the — was it the north side — south side of the building?

A. On the south side.

Q. How far were you from where their taxicabs stopped to let them out?

A. Oh, 40 feet, 40 or 50 feet, something like that. Not too far.

Q. Why did you go into the station at that point?

A. Just went into the station.

Q. Why?

A. To check it out. To see what — this wasn't normal for, say, that many people coming in and getting out of cabs and come in the station at one time and we were just — wanted to look it over. Our job was down there enforcing the law.

Q. When they got out of the cabs, did you see them do anything which might lead you to think they were violating the law?

A. No.

Q. Clergymen don't normally violate the law, do they?

A. Not as I know of.

Q. In fact, it is rather unusual, isn't it?

A. Yes.

Q. And yet you went into the station?

A. Yes.

Q. Had you been expecting them?

A. We had heard that there were fifteen ministers in town. As far as expecting them at the Trailways bus station, we weren't. We didn't know.

Q. Did you know what time they were going to get here?

A. No.

Q. Did you know what bus they were going to take?

A. No.

Q. Were you waiting for them?

A. No.

Q. Well, why were you at in the back of the station?

A. We were standing out there patrolling. Just out looking.

Q. Well, wasn't your normal patrol inside the bus station?

A. No, not normally. When you work at the bus station down there, you work inside and out. You got buses coming in all the time. You got cabs letting people out in front. You can't never tell what you might run into.

Q. It wasn't until they arrived in cabs that you decided to go into the bus station?

A. Yes.

Q. Now, who was it told you that they were expected at the bus station?

A. Hadn't anybody told me they were expected at the bus station.

Q. Nobody told you?

A. No.

Q. Hadn't you talked with any other officer of the Police Department about this?

A. You mean discussed it with anybody?

Q. Before they came?

A. No.

Q. Not at all?

A. No.

Q. Who was your immediate superior?

A. You mean as our Shift Captain?

Q. Yes.

A. Well, Captain J. D. Lowery is my Shift Captain, but Chief Ray is over all uniformed patrolmen.

Q. Well, who was it who called Captain Ray to the station?

A. Officer Nichols.

Q. You had placed them under arrest, is that right?

A. Yes, sir.

Q. Why did he call Captain Ray?

A. We wanted a supervising officer down.

Q. Did you need an officer -- supervising officer when you are making a simple arrest for disorderly conduct or breach of the peace?

A. Usually you want a supervising officer for something like that.

Q. Don't you frequently make arrests for breach of the peace and other similar acts?

A. This is my first to ever make on breach of the peace, but other arrests I have made, yes.

Q. Do you always call a supervising officer?

A. In some cases, yes.

Q. And in some cases then you don't?

A. In some cases I don't.

Q. Do you think that -- I withdraw that. Was there anything about what these people did that you thought they might try to break away from you?

A. No.

Q. Was there anything they said or did which might make you think that these fifteen clergymen would commit violence upon you?

A. No.

Q. You weren't worried about that, were you?

A. No.

Q. You weren't worried about them committing violence against anybody inside the station either, were you?

A. No.

Q. This was the first time you had made any breach of the peace arrest, is that right?

A. Yes, sir.

Q. Now when — what time did you say Officer Nichols arrived?

A. Well, he got down about 9:00 or 9:30.

Q. Did the two of you discuss the fact that these fifteen Episcopal clergymen might arrive sometime that morning?

A. I think it might have been mentioned.

Q. Was it mentioned by you or by him?

A. That I don't remember. Just two officers working together, just talking.

Q. Now, when they left the taxicab, could you at that time tell whether there were any Negro clergymen amongst the group?

A. I didn't notice.

Q. You didn't notice any?

A. No.

Q. Well, you had heard stories that there were fifteen clergymen — Episcopal clergymen in town before this, hadn't you?

A. Yes, I heard it on the news, in the newspapers.

Q. Do you know whether — did the newspapers tell you whether any of them were Negroes or not?

A. I am unable to answer that because I don't remember.

Q. Well, then what was — if they were not a group of whites and Negroes together, what was causing the excitement that you described a moment ago?

A. Some of these — citizens of Jackson knew it.

Q. If you said you didn't know it, how did you know the citizens of Jackson knew it?

A. Maybe the citizens of Jackson read more newspapers than I do.

Q. Well, did you know whether the citizens of Jackson knew that there were whites and Negroes together?

A. They would have noticed them when they got there if they didn't know it beforehand.

Q. Now, you said when they got out of the taxicabs you didn't notice if there were any whites and Negroes together in that group?

A. No, sir, I didn't notice.

Q. Well then, how did you know there were any whites and Negroes together in thatgroup?

A. When they walked in the front door.

Q. Do you think it was the fact that the whites and Negroes were together that was, as you say, causing the mumbling in the station?

A. It could have been, yes.

Q. You have been a policeman for three years, haven't you?

A. Yes.

Q. How long have you lived in Jackson?

A. About six.

Q. Where did you come from before that?

A. Simpson County.

Q. Then, you are a long term Mississippi resident, aren't you?

A. Right.

Q. Well, didn't you suspect at all that that might be the reason you heard this mumbling?

A. It could have been, I don't know.

Q. Now this part of the station was for white people, isn't that right?

A. Yes.

Q. Now, if a Negro walks in that part of the station, he is asked to leave, isn't that right?

A. Not all the time, no. It is according to whether he violates any law or not.

Q. It is according to whether he is violating a law?

A. Yeah. If he comes in drunk, or something like that, he is placed under arrest, carried out.

Q. And if he is quiet and doesn't say anything to anybody, he will be allowed to stay?

A. It's according to how the crowd reacts.

Q. Yes. So if the crowd reacts, then you will ask him to leave, is that right?

A. Yes.

Q. Had you, yourself, been in the station when -- and asked Negroes to leave the station?

A. No.

Q. You have never had any Negroes enter the station while you had been on duty there?

A. I believe there had been some freedom riders that came in while we were working there.

Q. Well, did you arrest any of them?

A. No.

Q. Were they allowed to go through the station?

A. No.

Q. Well, I am asking you, while you were on duty, wasn't it three weeks before this?

A. Yes, something like that.

Q. Had any Negroes tried to enter the station while you were there?

A. No.

Q. So far as you know, this was the first time any Negroes had entered the white part of the station in your presence, is that correct?

A. Let me explain here --

Q. Please do.

A. I believe that there was one, maybe two, groups of freedom riders came in.

Q. Yeah.

A. While I was working there that three weeks' time, I believe there was niggers in that group.

Q. Were they asked to leave?

A. The whole group was asked to leave.

Q. What happened?

A. Huh?

Q. What happened?

A. Breach of the peace.

Q. Were you there at the time?

A. Yes.

Q. You didn't arrest them, though?

A. Captain Ray was at the station at that time.

Q. Was he at the station at the time they came in?

A. Yes.

Q. I see. About -- how long before September 13th did that group arrive at the station?

A. That I couldn't say, I don't know.

Q. Well, was it one week before -- two weeks?

A. I am unable to answer that. I sure don't know, unless you want me to give you a real rough estimate.

Q. Well, you were in the station about three weeks before September 13th?

A. Yes, sir.

Q. Did this arrest occur just after you were assigned to the station?

A. The arrest that I made or --

Q. The arrest of these other people?

A. I believe it was about a week after that, that was happening.

Q. Oh. Now, at that time did those people themselves say or do anything of a violent nature?

A. The ones that came in?

Q. Yes, a few weeks before this arrest?

A. No.

Q. Now, isn't it a fact that every time Negroes stayed in that part of the station, they were arrested?

A. No.

Q. Can you tell me anytime, to your knowledge, when a Negro went in that part of the station when he had not been arrested?

A. Not to my knowledge, no.

Q. Did you have occasion to speak to Captain Ray that morning?

A. Not until after he had got up to the jail.

Q. Not before they were arrested?

A. No.

Q. Had you spoken to him the day before?

A. I am not sure when I talked to Captain Ray the last time.

Q. All right. Now, do you know whether it was the policy of the Jackson City Police Department to arrest any Negroes when they walked into that part of the station?

A. I don't know of that being the policy, but I know it is a policy to preserve the peace in the city of Jackson.

Q. Well, does a breach of the peace happen, in your understanding of the law, anytime a Negro enters the station?

A. No, not to my knowledge.

Q. You mean -- there was that sign that said "white people only" or "whites only", didn't it? Right in front of the station, wasn't there?

A. Yes.

Q. Do you recall whether at that time it said "By order of the Police Department"?

A. I am not sure on that. I can't answer that. Whether it had "By order of the Police Department" on it, I am not sure of that.

Q. What did -- did the sign say anything except "white people only", or "whites only"?

A. I am not sure. I never paid it any attention.

Q. You used to walk past that sign everyday, didn't you?

A. Well, I realize I am under oath, and if I said it had it on it and it didn't, that would just be rough on me, so I am not sure whether it did or didn't have "By order of the Police Department" on it.

Q. Now, had you ever asked any Negro person to leave the station?

A. No.

Q. And none had entered the station in the three weeks you had been there prior to that -- prior to September 13th, is that correct?

A. That's right.

Q. Now, were you present in court, or in the vicinity of the court at the time of the appeal before Judge Moore in the County Court?

A. I was in a room adjacent to the courtroom.

Q. Yes. You were -- you had been told to be ready to testify, if necessary, isn't that right?

A. Yes.

Q. And had you met with anybody from the City prosecutor's office to discuss the case prior to that appeal?

A. Not until that morning over in the courtroom, I talked to City prosecuting Attorney Jack Travis in the room --

Q. He knew you were there then?

A. Yes.

Q. You were in another room next to the courtroom, is that right?

A. Yes.

Q. There is another courtroom right behind this courtroom -- the courtroom where Judge Moore is at, is that correct?

A. Yes.

Q. That's where you sat?

A. Yes, part of the time.

Q. Didn't I see you there at the time?

A. You saw me around there somewhere. I remember you.

Q. Now, were you calld as a witness?

A. No.

Q. You hadn't refused to be a witness, had you?

A. No.

Q. Do you know that there were -- what Judge Moore did on that appeal?

A. He dropped the charges on them and dismissed the case, or something to that effect.

Q. And did you hear him say, or were you told he said, there wasn't evidence to indicate the law had been violated?

A. Something to that effect.

Q. Now, since you knew about Judge Moore's decision, do you still think that you were correct in arresting them?

A. Yes.

Q. Even though on appeal they were --- the conviction was reversed?

A. Yes.

Q. Now, you were the one who placed them under arrest?

A. Yes.

Q. Did Officer Nichols go to call Captain Ray?

A. Yes.

Q. Now, how long was it before Captain Ray reached the station after the telephone call?

A. Oh, in five minutes.

Q. Well, how far away is the Police office from the Trailways bus station?

A. About a block.

Q. So, he must have come right over, is that right?

A. Well, the Trailways bus terminal is in one block and the Police Department is in the next block.

Q. Well, just for the sake of the record, the Trailways bus station is at Pascagoula and Lamar, isn't that right?

A. Yes.

Q. Now, where is the Police station?

A. Pascagoula and South West. South West on the west side of the building — it's in the block there. And South Congress Street is on the east side of the building.

Q. Now, what entrance of the building did he come into?

A. I didn't see the Captain when he come in.

Q. Oh, you didn't see him come in?

A. No, sir.

Q. Well, then did he come over — did he see you keeping these people in the station?

A. I am pretty sure that he observed us and the crowd as he came in.

Q. Now, you were standing with them — was it near the restaurant?

A. It was there in front. Well, pretty close to it.

Q. About how many feet?

A. Oh, from that door, about four or five feet.

Q. In other words, you were right close to it?

A. Yes.

Q. And Captain Ray came in?

A. Yes.

Q. Did he ask you whether you had placed them under arrest?

A. No.

Q. Did you tell him they were under arrest?

A. No.

Q. He's your superior officer?

A. Right.

Q. Well, what was he doing there?

A. Acting as my superior officer.

Q. Well, didn't you think it was important to tell him that you had placed them under arrest?

A. No.

Q. You didn't think it was?

A. Because he had started talking to the group. And when I noticed he was there, he was talking to them.

Q. Well, they were under arrest at the time he was talking to them, is that correct?

A. Yes.

Q. You had placed them that way?

A. Yes.

Q. Well, he was asking them to move on, now, wasn't he?

A. Yes.

Q. Well, could they have moved on, if they were under arrest already?

A. He offered to show them safely to the bus and --

Q. Go on and finish your sentence.

A. -- and by that -- him acting as my superior officer.

Q. But they were already under arrest, weren't they?

A. Yes.

Q. Well, how could they move on if they were under arrest?

A. Just following through me -- Chief, Captain Ray, when he got there, he was in command.

Q. Does he have the right to place people out of arrest when you place them under arrest. Is that your understanding of the function of the Police Department?

A. Yes. Acting as my superior officer, yes.

Q. He has the right to free people after you have arrested them?

A. I believe so, yes.

Q. Did he know whether you had observed any conduct which gave you the right to place them under arrest? He couldn't have known, could he?

A. No.

Q. No, because he came right to the station and came up behind you, isn't that right?

A. Yes.

Q. So, he didn't know why you had placed them under arrest, did he?

A. No.

Q. He didn't know, for example, whether you had observed these people strike somebody. He couldn't have known that, could he?

A. No.

Q. And you didn't think it important to tell him that you had placed them under arrest?

A. No. Because he came in and started talking and he was in command at that point, or in charge, as my supervising officer.

Q. Well, you thought a -- you thought a violation of the law had occurred, isn't that correct?

A. Yes, sir.

Q. That was why you had placed them under arrest?

A. Yes.

Q. And he was offering to release them if they would leave the station, isn't that right?

A. Yes.

Q. Well, didn't you think it was your duty to tell him that they had committed a violation of the law in your presence?

A. When -- I presume when he came into the station he observed the crowd to see what kind of mood they were in, Practically the same thing that Officer Nichols and I --

Q. Let me ask you this. Now, these fifteen clergymen, they were near the entrance to the restaurant, isn't that correct?

A. Yes.

Q. Were you facing the entrance to the restaurant?

A. Not exactly facing the entrance to it. I was --

Q. Looking toward it anyway, isn't that right?

A. Kinda half way toward it, yes.

Q. And they were -- isn't there sort of a little alcove, a small area, that is sort of surrounded on the one side by that door to the restaurant and the other side by a little wall up there?

A. Well, a wall or a narrow space --

Q. There's a narrow space there, isn't it?

A. Yes.

Q. And they were in that narrow space, weren't they?

A. All of them weren't in the narrow space, no.

Q. And you were, more or less, facing them, isn't that correct?

A. Yes.

Q. And you had your back then to the main part of the station, is that correct?

A. The way it is now, they was in the little concession stand part there, and I was, more or less, standing where I could focus my eyes in different directions there. I mean, the crowd was, more or less, to my left.

Q. Well, were you facing the concession stand?

A. Yes, partly facing it.

Q. Well, the crowd was to your left near the door alongside the concession stand?

A. As you walk in the front door the concession stand is on the left.

Q. Now, you said a little while ago that you thought the crowd might do something, isn't that what you said?

A. Yes.

Q. Now, after you placed them under arrest, didn't you think you ought to for everybody's sake ask the crowd to leave the station?

A. We was holding what we had right there until Chief Ray got down there --

Q. Weren't you afraid that some act of violence might take place?

A. Yes.

Q. Well, why didn't you ask the crowd that you saw following them into the station to leave?

A. We were just holding our own for the present time. They were clergymen -- these ministers had gone into some kind of meditation. I presumed it to be a prayer.

Q. Well, do you know what prayer they were saying?

A. No, I don't.

Q. Do you know what the Lord's Prayer is?

A. Yes, I know what the Lord's Prayer is.

Q. Could you tell if they were reciting the Lord's Prayer?

A. I don't know whether they were or not.

Q. You couldn't hear them?

A. I couldn't understand them real plain, no.

Q. All right. At the time they were saying the Lord's

Prayer, that was before Captain Ray arrived?

A. Yes.

Q. At that moment were you still afraid that the crowd was going to do something violent?

A. Yes.

Q. Why at that moment didn't you ask the crowd behind you to leave the station?

A. As I said, we were just holding our own there until -- we had the ministers there, more or less, in a group and we just started moving them out, scattering them out so that would give the crowd plenty of room to move then on.

Q. Well, the crowd that you say you saw following them into the station, they didn't have any regular business in the station, did they?

A. Not that I know of.

Q. Why didn't you ask them to leave?

A. We were concerned about the ministers at the time. We had determined that they might be the cause of violence.

Q. Well, why didn't you -- they weren't going to commit the violence, were they?

A. The ministers?

Q. Yeah.

A. I don't know.

Q. Well, did they look like they were going to commit any?

A. No.

Q. It was the other people who looked like they were going to commit violence, is that right?

A. Yes.

Q. Well, why didn't you ask them to leave?

A. We had determined that the ministers was the cause of violence, if any might occur.

Q. They would be the cause of the violence because they were standing in the station?

A. Because of their presence there.

Q. Because of their presence in the station, is that right?

A. Because they were there.

Q. They did nothing except be present in the station, is that right?

A. Because before the ministers came in the station everything was normal in the bus station. After they came in, the crowd came in. Kept moving around in an ugly mood.

Q. I am almost finished. I just have one or two more questions. Could you tell from your looking at the ministers what it was about their presence that was causing the crowd to be in an ugly mood -- to use your term?

A. No.

Q. You couldn't tell?

A. No.

Q. And you say it had nothing to do with the fact that there were whites and Negroes together?

A. Yeah, as I said a while ago, it might have been the trouble. Because of the freedom riders that had been coming into Jackson. The people of the city of Jackson was in a tense mood about that time because we had freedom rides here for, oh, four or five months, ever how long it was.

Q. Are you a member of the white Citizens' Council?

A. No.

Q. Have you ever been a member?

A. No. Now, wait a minute. That white Citizens' Council, what kind of council is that?

Q. Have you ever heard of an organization known as the Citizens' Council?

A. Oh, yes.

Q. Are you a member of that organization?

A. No.

Q. Have you ever been a member of that organization?

A. No.

Q. Do you know as a police officer whether there is any law which requires white and Negro people not to come together in a bus station? Any Mississippi law?

A. I am not that familiar with the laws of Mississippi.

Q. Well, you are a police officer, aren't you? How would you know whether somebody violates the law then?

A. What do you mean by "how somebody violates the law"?

Q. Well, if you are not familiar with the law, how do you know when the law is violated?

A. There are different things. Like a drunk, I know a drunk when I see one. Somebody assaults someone, the person he assaulted.

Q. Well, do you know whether there are laws in the state of Mississippi which require segregation of whites and Negroes?

A. No, I don't. I am not sure.

Q. You are not familiar with any laws like that?

A. I don't know that -- no.

Q. Do you believe in segregation?

A. Yes.

Q. Do you think it is wrong for whites and Negroes to

Specl
p v h

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

APPEARANCES:

CARL RACHLIN, ESQ.
280 Broadway
New York, New York,
ATTORNEY FOR PLAINTIFFS

E. W. STENNETT, ESQ. and
THOS. H. WATKINS, ESQ., Jackson, Mississippi
ATTORNEYS FOR DEFENDANTS

DEPOSITION OF JAMES L. SPENCER
Jackson, Mississippi
February 15, 1963

BE IT REMEMBERED that the depositions of the defendants, J. L. Ray, J. O. Griffith, D. A. Nichols, and James L. Spencer, as adverse parties were taken by the plaintiffs in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above styled and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 1:00 p.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action and pursuant to the following additional stipulation, towit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the defendants be taken before Mildred A. Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of said depositions, same shall be presented to one counsel of record for each of the parties and thereafter to each of

the defendants for reading and signature, which signature and verification may be had before any notary public or other officer qualified to administer oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party reserves the right to object to otherwise inadmissible

matters elicited in the course of the depositions.

APPROVED:

Carl Rachlin /s/
Of Counsel for Plaintiffs

APPROVED:

Thos. H. Watkins /s/
Of Counsel for Defendants

JAMES L. SPENCER

having been first duly sworn, testified as follows:

BY MR. RACHLIN:

Q. Judge, do you mind giving us your full name?

A. James L. Spencer.

Q. And your address, residence, please?

A. 2047 Culleywood Road, Jackson, Mississippi.

Q. How long have you been a resident of Jackson?

A. Since 1945.

Q. I take it you weren't born here?

A. No, sir.

Q. Where was your home originally?

A. Well, I was born in Hattiesburg, Mississippi, but we left there when I was approximatly six weeks old, and my school years were spent in Jackson, Tennessee, and during the summer months, I would spend a large part of the summer months in Carrollton, Mississippi.

Q. And where did you get your collegiate education, Judge?

A. I received a Bachelor of Arts degree from the University of Alabama, and Bachelor of Law degree from the University of Virginia.

Q. And when was the latter?

A. 1947.

Q. And when were you admitted to the bar of Mississippi, Judge?

A. In 1946 or seven I took the bar exam during the time I was at the University of Virginia. I believe it was early '47. It could have been late '46.

Q. And when was it you became a Judge?

A. On July 1, 1958, I believe. I was appointed Police Justice and Ex Officio Justice of the Peace for the City of Jackson, Mississippi.

Q. I take it that is not an elected job, is it?

A. No, sir.

Q. Now, is this a job that is fulltime?

A. No, sir.

Q. How much of your time does it take?

A. Well, it's hard to estimate. I hold Court five days a week, Monday through Friday, beginning at four o'clock.

Q. I see.

A. In addition to that, I have other duties. Officers presenting search warrants to me, and as you can imagine, people call me on the telephone. I would guess it takes two hours a day.

Q. In other words, the time up to four o'clock you spend on your legal practice of the law; is that correct?

A. Correct.

Q. And I take it that is a busy practice?

A. Well, no lawyer ever thinks he is busy enough.

Q. Okay. Now, much has been made during the course of the day that you are an Episcopalian. I assume that is not an inaccurate statement?

A. That is an accurate statement.

Q. Have you always been an Episcopalian?

A. No, sir.

Q. When did you become one?

A. I would guess I have been an Episcopalian approximately six years.

Q. Six years. I take it your becoming one was obviously a voluntary act on your part?

A. It was.

Q. Now, are you a member of the Citizens' Council?

A. No, sir.

Q. Have you ever been a member of the Citizens' Council?

A. No, sir, I have not.

Q. At no time?

A. No, sir.

Q. I take it you have some familiarity with the point of view expressed by that organization?

A. Mr. Rachlin, I would say it is a slight familiarity. I have never taken all their principles and goals, if such are expressed in a document, and analyzed them. On occasion they have used television programs, and I read of some of their actions in the newspaper, and as to their principles and doctrines, I cannot accurately state.

Q. Can you tell me anything that they have said or done recently with which you disagree?

A. Yes.

Q. What is that?

A. I say "they". Recently at a Citizens' Council banquet I understand from hearsay - I wasn't there - that a telegram was circulated purportedly signed by an Episcopal rector of our city stating integration views of which I have forgotten the context of the letter - of the telegram, and great publicity was given to it, I believe with the intention to harm the reputation of this rector. It has later been, I believe, proven - I am advised that a definite identification has been made of the man that sent the telegram, and it was not the rector. He was a member of, and I believe a director of the Citizens' Council; and I not only strongly disapproved of it, I was revolted by it.

Q. Now, Judge, do you personally favor the segregation of the races in Mississippi?

A. Mr. Rachlin, the phrase segregation, integration, moderate, - I might even carry it further - liberal, conservatives, and so forth, to me has been so banded about and so much propagandized, I hardly know what is meant by the phrases. If I may explain a little further, --

Q. Please feel free.

A. We have a situation here in Mississippi where we have two races living side by side. Each of these two races have different mores, different customs, different stages of social advancement, different backgrounds, different traditions. Now, as to segregation or integration, I believe that if you try to suddenly throw these two races together and more or less put them in one salad and add some condiments and mix them up, and try to come out with one salad, and have someone say, "If you don't do it, we are going to "sic" the federal troops and federal marshals on you", I believe that is highly improper. I believe it would result in tremendous violence and bloodshed, and to that extent, I am a firm segregationist. I believe that as time goes on, if the Negro race achieves a social achievement, if their mores, their customs are such that the white race and the Negro race are compatible, then I believe there would be no question of segregation or integration.

Q. It will disappear?

A. I believe it will disappear if that is achieved. Whether or not it can be achieved, I don't know. I would say that it would have to be a process more or less of evolution rather than revolution. There must come a situation where the white race respects the Negro race as individuals, and the Negro race respects the white race as individuals, and until that is achieved, I believe the races should not be forceably integrated. I believe that if they attempt to be forced into one so-called melting pot at this time, I do not believe it would work. I have been long-winded; I apologize.

Q. Don't apologize to me.

A. Whether I am a segregationist, an integrationist, a moderate, or liberal or conservative --

Q. Do you think that, for example, a Negro should be allowed to stay - Suppose a Negro attorney were to come to Jackson, do you think he should be allowed to stay in any hotel in Jackson that he would like to stay?

A. At the present time, no.

Q. Now, how about one of the public restaurants on Capitol Street?

A. I would say at the present time, no.

Q. Well, suppose --

BY MR. WATKINS: Excuse me, Mr. Rachlin. Are you asking him for his opinion as to what the law is or what he thinks?

BY MR. RACHLIN: No. I want to know what he thinks.

Q. Suppose a Negro comes to town, an attorney, or a minister, or anybody else, and wants to use either one of the bus terminals of the Continental Trailways bus station. Do you think that should be permitted?

A. Yes, if he comes to town in the ordinary course of business, yes. If he so precedes his visit by such actions as will attract outstanding attention to him, perhaps inflame the populace, I say no.

Q. Well, now, you are familiar, of course, as a judge, that there are a number of statutes of the State of Mississippi that require segregation of the races, are there not?

A. Well, Mr. Rachlin, I may show my ignorance, but I can say no, I have never had a case presented to me under those statutes. I have never made a study of the segregation laws of the State of Mississippi, the so-called Jim Crow laws. I have read about them in the newspaper, but I have never made a study of them.

Q. Do you know that if a railroad passenger conductor fails to assign white people to a white car on the road, and the Negro people to a Negro car on the road, he shall be guilty of a misdemeanor?

A. I cannot say that I know of that statute. I know that I have read various Jim Crow laws. I have never looked them up and studied them.

Q. Now, when did you first learn that you were going to be the trial judge in the case of the fifteen Episcopal ministers who were arrested?

A. Well, I first learned of their arrest through the news media, sometime after their arrest. Now, you say learned whether I would be trial judge. When I read of their arrest either in the newspaper or heard it over the radio, or some such announcement, I had very grave concern as to my being the trial judge, whether I should recuse myself; so until I resolved that in my mind, I did not knew I would be the trial judge; but as to their arrest, I assume sometime after they were arrested, I learned of it through the news media and knew that if charged, they would be charged in my Court.

Q. When you say you were not certain you should recuse yourself, did you discuss this with anyone?

A. Yes, I did.

Q. With whom did you discuss it?

A. Discussed it with my rector.

Q. Who is that, please?

A. Reverend Edward Harrison.

Q. Harrison?

A. Yes.

Q. With anyone else?

A. Yes, sir.

Q. Who was that?

A. The Assistant Rector.

Q. Continue.

A. Mr. Pat Sanders. The Reverend Pat Sanders.

Q. And were they the only ones you discussed it with?

A. Yes.

Q. No one else at all?

A. No, sir.

Q. Now, I take it that you are familiar with the Supreme Court decisions beginning with the famous case of Brown against the Board of Education of Topeka, Kansas?

A. I am familiar with that decision. I probably could not give you a searching analysis of it at this time, but I have read the opinion.

Q. And you know that - I assume you knew that that decision held that the maintenance of separate but equal facilities was a denial of equal protection of the law?

BY MR. WATKINS: I want to object to that question because the decision limited it strictly to schools.

BY MR. RACHLIN: In schools. I will amend my question.

Q. In schools?

A. Yes.

Q. And there have been a number of decisions since that time, haven't there, on the related subject?

A. Yes, I believe there are. I read about them in the paper occasionally.

Q. Do you keep up with the legal literature on the activities of the United States Supreme Court?

A. No, sir, not to the extent that I should. I have very few cases that go to the Supreme Court in my private practice.

Q. But as a judge, didn't you feel that there might be some obligation on your part to keep abreast of this material?

A. No, sir, because on each case that is presented to me,-As you know, an attorney cannot keep fully abreast of all fields of law, and on each particular case pending before him, he depends, to a large extent, on the arguments of counsel and the citations of counsel, and then makes an independent research of any particular question pending before him at that time. I may add that I do not subscribe to the Supreme Court Reporter and do not get their advance sheets.

Q. I forgot. You mentioned the name of the parish that you belong to. What parish is that? Somehow it slipped my mind.

A. At the time, I was a member of St. Andrew's Parish.

Q. Yes.

A. I am presently a member of St. Philip's Mission.

Q. Now, I am reading from the document entitled "The Church Speaks on Race", the official statement of the

Episcopal Church 1940 to 1958, issued by the National Council, 281 Park Avenue South, New York 10, New York.

A. Does it elaborate on National Council, or is it just the National Council?

Q. Of the Episcopal Church. Now, I am reading from a statement of 1943 where it says: "Desegregation must be the goal for all church institutions and agencies." Now, as an Episcopalian, do you agree with that statement?

A. It depends on what they mean by desegregation. If they mean it in a term which is being - which I see used a lots, I disagree with that statement. I believe that forced desegregation in Mississippi at this time is most unwise, will continue to be a problem for many, many years to come.

Q. Now, I am reading from page eleven, statement of 1948, which begins: "That the conference is convinced that discrimination between men on the grounds of race alone is inconsistent with the principles of Christ's religion." Do you agree with that statement?

A. Would you read the statement again?

Q. I'll show it to you.

(Witness looks at instrument.)

A. That is a phrase which I find it hard to agree with. The practical application of that phrase is what I would argue with. It uses the word "Discrimination", and in the doctrine of separate but equal facilities, I firmly believe that the facilities should be equal and that there should be fair treatment for every men - every man.

Q. Well, do you believe in the doctrine of separate but equal facilities?

A. I do.

Q. I take it this is a guidepost in the way of your attitude toward life and the relations between white and Negro people; is that correct?

A. It is. As I have explained earlier, if we ever reach a state where the great majority of the white people people respect -- I am speaking of Mississippi now -- the Negroes as individuals, and the Negro race has earned that respect and has achieved a status of intellectual, cultural, and social achievement to where the two races can be compatible, then perhaps at that time both races would accept each other as one salad, so to speak, as I said earlier. At this stage of the game - You must remember that here in Mississippi there are still Negroes who practice voodoo. There are still Negroes who go to the herb doctor instead of the medical doctor. They are several generations out of slavery.

Q. I take it that on September 13, 1961, you didn't think then that this state had arrived in Mississippi where the two could be one salad bowl, as you describe it?

A. No, sir, I did not so believe, but I assure you that my views on segregation and integration as we have expressed it, have never influenced me in one way in making any decision on the bench.

Q. Well, now, you have heard the testimony, and it was only Captain Ray's testimony, in the trial before you. You didn't have the benefit of any testimony from anybody else except Canon John Crocker, isn't that right?

A. That's correct. As I recall, only two witnesses testified in the Municipal Court; Captain Ray and Reverend Crocker.

Q. Now, I take it then when you heard Canon Crocker describe the people in the station as being --

A. I beg your pardon. What is the prefix to the Crocker you are using?

Q. Canon - C-a-n-o-n. That is his title, and he is attached to a cathedral.

A. Oh, I'm sorry. I remember him as Reverend Crocker.

Q. Well, you remember him testifying that the people in the station were peaceful and orderly while they were in there? Do you recall his saying that?

A. Yes.

Q. You heard Captain Ray -- at that time Captain Ray -- describe how he believed they were disturbed; isn't that right?

A. That is correct.

Q. You chose to believe Captain Ray's statement as against Canon Crocker's statement; is that right?

A. That is correct.

Q. Now, you did hear Captain Ray describe how the ministers themselves had committed no acts of violence; isn't that correct?

A. That is correct.

Q. And you heard him testify, both today and at that time, that they didn't use any profanity or obscene language?

A. That is correct.

Q. Nor did they say anything which should disturb anybody? You heard him say that too, didn't you?

A. That's correct.

Q. Nor did they, from his testimony, commit any of the common acts that we consider breach of the peace, like spitting on the sidewalk, or being drunk, or anything like that. There was none of that involved in the case, was there?

A. None of the examples that you mentioned, no.

Q. Then, what was the evidence in the case that caused you to convict these people for breach of the peace?

A. I would say it was the evidence which Captain Ray gave which basically was the same evidence I listened to here previously in his deposition. I sat through his deposition. Basically the same evidence which was given there. As I understand the statute under which they were charged, it had basically four elements to it: One, if a group of people; two, congregate in a public place; three, under circumstances such as would occasion a breach of the peace; four, ordered to move on by a law enforcement officer and refuse to do so. If the evidence shows that those elements are present, then the defendants are guilty as charged, and I felt that those elements were present.

Q. Even though they themselves had neither said nor done anything except be in the station?

A. Well, Mr. Rachlin, they had said much preceding their visit to Jackson through the news media; television, radio, newspapers, press releases which they gave. As far as saying anything, I think those were elements which largely entered into their presence being such as would occasion a breach of the peace.

Q. Was there any evidence in the record that they said anything or did anything?

A. In the bus station?

Q. In the bus station.

A. No, only such as was related by Captain Ray.

Q. That wasn't disorderly in itself, was it?

A. No, sir.

Q. So it was their presence in the bus station that you considered the prime factor; is that right?

A. Their presence, plus the preceding buildup of inflammatory press releases resulting in a tense situation of - the word "turmoil" has been used. I think that correctly describes the situation.

Q. Now, do you think that a citizen ever has the right to refuse to obey an order of the police department?

A. That question --

Q. I am sorry. Do you think that a citizen ever has the right to disobey an order of a police officer?

A. That question "ever".

Q. Yes.

A. I had never speculated on all the possibilities which may arise. Maybe you had better elaborate on your question. I am confused by your question.

BY MR. WATKINS: Counsel, would you be willing to amend your question by letting it read "any reasonable order of a police officer"?

BY MR. RACHLIN: I can't do that. I don't mean to -- That's not what I had in mind.

Q. Suppose a police would make an unreasonable order. Does a citizen have the right to disobey that order?

A. I would think the citizen's proper procedure would be to obey the officer and later seek redress.

Q. But not to disobey the order?

A. I know I certainly wouldn't.

Q. But do you think, regardless of what you or I or Mr. Watkins might do, or anybody else might do, do you think that a citizen has the right to disobey an improper order of a police officer?

A. I would answer that - Are you speaking from a legal standpoint or just my opinion?

Q. I am speaking to you as a judge now. Suppose there was a case in which it was clear that the order of the policeman to move on was improper?

A. I will say that I have never researched the law on that point, but my opinion, without researching the law,

EXHIBIT Plaintiffs #6
WITNESS
MAY 15 1963
United States District Court
Southern District Of Mississippi
DENTON B. JORDAN, Reporter

would be that he should obey the officer.

Q. Regardless of whether the order is improper or not, he should obey the order?

A. Yes.

Q. Are you familiar with the --

A. Now, you used the word "improper". Do you mean - Of course, improper is a matter of interpretation.

Q. I will spell it out. Suppose I am a police officer and I ask you to move on under circumstances where I, as the police officer, have no right to do that. Do you think that you, as a citizen, have a right to refuse to obey that order - a legal right to refuse to obey that order?

A. And the officer knows it's improper? Will you add that?

Q. Let's assume he doesn't know it's improper, but it is in fact improper?

A. No, sir. I think the citizen should move on.

Q. The citizen should move on?

A. Yes.

Q. Are you familiar with the decision the United States Supreme Court decided last June, Taylor against Louisiana?

A. No, sir, I am not.

Q. You are not? Well, for your own benefit, Judge Spencer, I suggest you read that case because the United States Supreme Court holds precisely the opposite on facts almost identical with the case before us on a statute almost identical with the statute before us. Taylor against Louisiana, decided by the United States Supreme Court last June.

BY MR. WATKINS: You are not charging him anything for that legal advice?

BY MR. RACHLIN: No. (Discussion off the record)

Q. Well, you are familiar with the well known case though of Garner against Louisiana? It was decided something over a year ago.

A. At the risk of showing my ignorance, I would say no.

Q. Well, the United States Supreme Court held that the mere presence of a person in a situation is not enough to warrant a breach of the peace.

A. No, sir, I am not familiar with that decision.

Q. Judge Spencer --

A. Were these cases decided before the trial of the plaintiffs in this case?

Q. No.

A. They have been decided since then?

Q. Yes. I wasn't suggesting that. Now, you know that

Judge Moore reversed the convictions here, don't you?

A. I understand he did.

Q. And do you know the basis of his reversal?

A. No, sir, I do not.

Q. Did you ever discuss it with him?

A. No, sir.

Q. Have you ever talked to Judge Moore about this case?

A. No, I haven't.

Q. Have you ever talked to Judge Moore about any of these so-called freedom rider cases that Mr. Watkins phrased or that he has used so much all day?

A. No, sir, I have not.

Q. Well, now, you were the one who was the trial judge in many of those so-called freedom rider cases?

A. Yes, sir.

Q. In fact, you tried all of them, didn't you?

A. I believe so.

Q. Now, in the first cases that you tried what was the sentence that you passed, do you recall?

A. In the first cases there were suspended sentences, if I recall correctly.

Q. Yes. Now, would that have - Those were the time when I think Captain Ray described the situation as being very tense, isn't that correct?

A. Yes. Well, now you - I am sorry. I perhaps answered before I got your full question.

Q. You modify it anyway you want it.

A. I think the situation has been very tense, or was very tense, throughout the entire period of the so-called freedom rides. Now, if I am reflecting on your question, you stated that that was the time that Captain Ray stated that things were so tense. They were tense throughout the entire period.

Q. You heard him testify that for approximately a few weeks or a month prior to September 13th the situation calmed down considerably?

A. It calmed down some. I would hesitate to use the word "considerably".

Q. Well, in the first cases anyway, the tension was at its height, wasn't it?

A. Yes, it was.

Q. Well, then, the first cases that you tried were the ones that were tried shortly after all the difficulties that Mr. Watkins described took place in Alabama, is that right?

A. Right.

Q. Yes. And you say - What were the first sentences you passed?

A. They were suspended sentences.

Q. Was there any fine involved then?

A. Mr. Rachlin, I can't recall. I could refer to my docket and answer that.

Q. No. But in any event, they were suspended sentences?

A. Yes.

Q. Now, do you recall what the sentence was in this case?

A. I would say the sentence increased as each group of freedom riders would come in until they reached the maximum prescribed by the Act. In what stages they were increased, I cannot recall at this time.

Q. What was the sentence you passed on them?

A. The maximum provided by the Act.

Q. Was it four months?

A. And there is also a fine.

Q. What was the fine?

A. I believe it was $300.00 and four months, or perhaps $200.00 and four months.

Q. Did you think then from the evidence you heard from Captain Ray based upon the evidence you heard from Canon Crocker that the acts of these people were more violative, seriously violative, of the ordinance than the initial cases you tried?

A. Yes, sir.

Q. You did think so?

A. Yes, sir.

Q. What was the acts that they themselves did that was violative of the statute?

A. The acts themselves --

Q. That they did or said, I don't care, either what they did or said that was violative of the statute as you understand it?

A. Well, I would say the intense publicity build-up which preceded their coming to Jackson which, in my opinion, inflamed the public in Jackson, and the fact that, as part of that publicity build-up, they went into the bus station which caused the crowd of people to follow them in there.

Q. Now, what was it that caused the crowd of people to follow them, as you describe it? They fact that they were whites and Negroes together?

A. I think that is one of the outstanding features combined with the build-up which preceded that.

Q. Well, now, you, of course, as a citizen of Jackson were aware of the police sign in front of the entrance of the station, weren't you?

A. No, sir, I wasn't. I will say frankly that I don't think I have been in the bus station once in the last five years.

Q. Well, you knew that Captain Ray had described that there was such a sign in front of the station?

A. Yes.

Q. And you heard him repeat it again in substance today? I don't recall if he used the same words, but in substance he said today what he said in the initial trial, isn't that right?

A. Yes.

Q. And that it said "White only - by order of the Police Department"?

A. He said there was a sign of some similar words. His exact words, I don't recall.

Q. Yes. But in substance, what I have just described - in substance?

A. That is correct.

Q. Well now, if it is an order of the police department to maintain white only, wouldn't it be wrong for a Negro citizen to go into that room?

A. I don't believe so. I cannot cite you any authority, and I never made a study of the cases because no such case has ever been presented to me, but I have a vague recollection that both the Supreme Court and the Interstate Commerce Commission have passed on that question. No case has ever been presented to me involving that question.

Q. Well now, if a police officer ordered a Negro to leave the station because the police officer understood his duty as expressed in that "By order of the Police Department", it would be the duty of the Negro citizen to leave, is that right?

A. Well, under the citation which you gave me a minute ago, apparently it would not be.

Q. Well, I am forgetting about that citation. That hadn't been decided at that time. But you testified a little earlier that you thought it was the duty of the citizen to obey an order of the police regardless of whether the citizen thought the policeman's order was improper or not, isn't that right?

A. That is correct.

Q. Now, here we have the sign described by Captain Ray "White waiting room only - By order of the Police Department". Now, if a policeman acts in pursuance of that sign and orders a Negro to leave the station, then I take it you would believe that the Negro had no right to stay in the station?

A. I would have believed it, yes, sir.

Q. Now, you have heard how Captain Ray described the sign as actually being there?

A. Yes.

Q. Now, what did you think these ministers were actually trying to accomplish in your mind by their presence in the station?

A. I did not know what they were trying to accomplish. The Reverend - excuse me, Cannn Crocker --

Q. Call him anything you want.

A. -- went at great length in his testimony to state what he was trying to accomplish. I was solely concerned in the testimony with the factual situation as to whether or not a breach of the peace would have been occasioned, and as to what they intended to accomplish, that is something in their own minds which I could not answer.

Q. Well, didn't it ever occur to you, Judge, that the police should ask the persons who were causing the hubbub, that is, the mumbling and grumbling that Captain Ray and the other officers described, to leave rather than the people who were the object of the mumbling and grumbling?

A. Now, Mr. Rachlin, you have come to a question of degree there. A police officer is on the scene, and to illustrate my point, let's say there is one person creating such acts as would commit a breach of the peace, or occasion a breach of the peace, and there are 200 people who would attack him. Unquestionably, he should devote his attention to the one man and try to remove him, because an officer is there to try to prevent a breach of the peace from being occasioned. Now, when you get down to the finer variations of that is where the question of degree comes in which poses a difficult question for a judge trying a case. In this situation, the testimony showed that there were fifteen ministers together; that there were some thirty or more people milling about in the station. There comes a question of degree as to the officer, who I am sure is not familiar with the rule in the Shelley case or any of the cases you have mentioned, as to what he should do; and there is a question in the judge's mind as to which is the proper course of action. Had there been fifteen ministers and one person who would be liable to commit an assault upon them, unquestionably, I would say remove the one man.

Q. In all seriousness, Judge Spencer, don't you think the doctrine you have just enunciated leads to legal blackmail?

A. No, sir, I do not.

Q. You don't think that, therefore, you can prevent a person from exercising his rights by having a mob threaten him, even no matter how honorable or peaceful his intentions might be?

A. I believe a man can use a legal right in such a way to incite a mob to violence, and that in that situation, even though a man is exercising his legal right, if he incites the mob to violence as a result of it, then quick action should be taken. I believe Oxford is an illustration of that. Speedy efficient action action in Oxford I believe could have prevented that situation.

Q. But you heard Mr. Crocker say that the crowd was quiet, didn't you?

A. Yes.

Q. And then you chose to believe a policeman rather than a priest of your church?

A. Yes.

Q. Do you think Mr. Crocker would lie?

A. That's carrying the statement pretty far.

Q. But isn't that what happened?

A. I realize that people in the heat of the situation view things differently. I am sure that you have seen automobile accidents where five witnesses give different versions of the accident, and each in his own mind is telling the truth. To ascribe the word "lie", I would hesitate to do so. He saw it differently.

Q. Well now, you heard him describe, and you heard it confirmed today, that they had been placed under arrest before Captain Ray got there, didn't you?

A. That was touched on in the trial. I don't believe it was elaborated on to the extent that it was in these depositions. I believe it was a parenthetical remark, so to speak, by Canon Crocker, if I recall correctly. It has been a year and a half ago.

Q. You don't recall his saying that they had been placed under arrest just in the manner as described in these depositions today?

A. Yes, but without going into the elaborate extent that they were gone into today. I recall, I believe, the arguing of the point at the conclusion of the trial that the order to move on was vague. I believe that point was argued at the conclusion of the trial.

Q. But if they had been under arrest by the other prior officer, wouldn't it have been improper for them to move on when told to move on by the other officer?

A. Not under the circumstances here present, no.

Q. You think that even a police captain has the right to tell people who have been arrested to move on, with the arresting officer standing next to him?

A. Yes. And that is highly important that the arresting officer is standing next to him, and when a superior officer tells them to move on with the arresting officer standing next to him and the arresting officer makes no objection, yes, I think that is proper.

Q. And you don't think this could truly and reasonably cause confusion in the minds of the people who are being given the contradictory orders?

A. No, sir.

Q. Those orders were contradictory, weren't they?

A. I don't believe so, under the circumstances.

Q. Well, you heard they were placed under arrest by officer Griffith? You heard that?

A. Yes, I heard that testimony.

Q. And they were under arrest when Captain Ray entered the station, weren't they?

A. Yes.

Q. And Captain Ray tells them to move on?

A. Yes.

Q. You don't think those were contradictory orders?

A. Not under the circumstances. I believe that Captain Ray had his subordinate officer standing by his side, and the superior officer, with the subordinate officer there, made the statements he did.

Q. Judge Spencer, did you retain Mr. Watkins?

A. Yes, sir.

Q. And are you paying his fee?

A. We have never discussed fee.

Q. Or is the City of Jackson going to assume the fee in your case?

A. I don't know. I have never been told so, but I certainly hope so, if any fee is charged.

Q. Are you familiar with the statement that Mayor Thompson made in which he said after the filing of the suit that the City would assume the fee and expenses?

A. I understand that such statements were made to the newspaper. None have ever been made to me. I will add, I certainly hope the City does, if any fees are charged.

Q. At any time during May, June, July, August, or September, 1961, did you discuss with anybody the nature of the sentences to be passed on people to be convicted under Section 2087.5?

A. I have only discussed them to the extent that, in open Court at the first trials of the so-called freedom riders, the prosecutor recommended to the Court, in open Court, that in the event convictions were had, he recommended suspended sentences.

Q. In the first cases?

A. Yes. And as time went on, I don't believe he made any further recommendations in his argument.

Q. Well, what point was it that you gave a sentence similar to the ones you passed on in this case?

A. It may have been the third or fourth trial involving the freedom riders.

Q. Wasn't it a fact that that didn't occur until after the middle of August, 1961?

A. I could not give you the exact time. I would have to check my docket.

Q. Couldn't you search your memory and see if that didn't occur until after Judge Moore, on the appeal of the first case, passed such a sentence?

A. I don't know if those two dates tie in together or not, because I have never in my mind correlated the two dates. My thought would be that the maximum sentence was reached before any cases were tried in Judge Moore's Court.

Q. Now, how long have you lived in the City of Jackson?

A. I came back from law school in '47 and have been here continuously since.

Q. Do you know the people of Jackson moderately well?

A. I think so.

Q. Do you seriously believe that under the circumstances described here that the citizens would have physically attacked fifteen members of the clergy?

A. Unquestionably, I think so.

Q. You know that Judge Moore disagreed with you, don't you? You know that, don't you?

A. No, I do not know that.

Q. You know he reversed the conviction?

A. I understand he reversed the conviction.

Q. Do you know that he reversed it on the grounds that the elements of the case weren't proved?

A. I don't know that. I don't know if any written opinion was given. All I know of that trial was what I read in the newspaper.

Q. Well, based upon his reversal, if you were presented with this case again, would you convict the people again?

A. Under the circumstances and the testimony which was given in the trial, I would.

Q. Despite the fact that he reversed it?

A. I don't know what evidence was presented to Judge Moore. You see, if it had been reversed on the record, then I would have followed his decision, but the appeal to the County Court from the Municipal Court or Police Court is de novo, and I do not know what evidence was presented to Judge Moore. I hear from the depositions taken here today that entirely different witnesses testified in County Court; that Captain Ray was the only one who testified in Police Court, whereas, one of the other officers testified in County Court. I do not know what evidence was presented to Judge Moore.

Q. But you knew it was an officer who was there during the entire time of the incident and not Captain Ray, who was there only part of it, isn't that right?

A. Frankly, I did not know who testified.

Q. Well, you heard today.

A. I heard today, yes. In fact, today is the first time I knew who did testify in County Court.

Q. Didn't you think it encumbent upon you, in a decision reversed of yours under a section which had achieved a certain amount of popularity and notoriety, to find out the basis of the reversal?

BY MR. WATKINS: Just a minute. I want to note an objection on the record. Counsel keeps referring to it as Judge Spencer's decision being reversed which is not at all the case. A trial de novo in the County Court resulted in a different verdict, but it did not pass on the legality of what Judge Spencer had done in any sense of the word.

BY MR. RACHLIN:

Q. Now, didn't you consider it important in a situation where you had been trying many cases under this section involving several hundred people, isn't that right?

A. Yes.

Q. -- to find out what was the basis of the different decision, to use Mr. Watkins' expression in this case on the appeal which is a trial de novo?

A. No, sir. My recollection is that there were no cases in my Court after the reversal; that the so-called freedom rider movement had ceased. Now, I may be in error on that. That's my recollection.

Q. Now, you had with you the - What was the name of the book that you quoted from during the course of your giving your opinion?

A. Prayer Book.

Q. Do you remember the full title?

A. No. I just refer to it as the prayer book. It's the prayer book used by the Episcopal Church in the services, setting forth the services, the articles of religion and the matters pertinent to the church.

Q. Was that your own copy?

A. Yes, sir. In fact, it had my name engraved on it. It was presented to me when I was confirmed.

Q. Six years ago?

A. Yes.

Q. Do you normally have it in Court?

A. No, sir.

Q. Was this the first time you ever had it in Court?

A. Yes, sir.

Q. Now, Mr. Nichols also had it in Court, didn't he?

A. Not to my knowledge, no.

Q. Didn't he read from it? Do you recall his reading from the prayer book?

A. I don't believe he did, no, sir.

Q. Didn't he read from the very same article that you read from?

A. I recollect he questioned on the same article. I don't recall he did it from the prayer book, no. He may have now. My recollection is he did all his examination from a legal pad of notes. He did examine Reverend Crocker on an article out of the prayer book.

Q. Now, why did you think it necessary to have a prayer book in Court?

A. I did not think it necessary. I'll state my reason as I stated previously. When the arrest was made, it weighed very heavily on my mind that I, as a member of an Episcopal Church, was trying in a Court of law priests of my church. Although none of us live the lives we perhaps should lead, I still feel very strongly about my church. I have a very high regard for the clergy of my church, and the decision weighed very heavily on my mind as to whether I, as a member of the church, should sit in legal judgment on the actions which would be described at the Court, and I believe I so stated in my opinion that I went to the prayer book and there found the article which I quoted. I said that more or less to the ministers who were on trial in response to the grave thoughts that were in my mind about a minister being tried in the Court of a parishoner of the same church, and I felt that that particular canon, that particular article of religion, resolved any doubt in my mind as to my sitting as judge in that case.

Q. Now, when did you -- You say you looked in the prayer book?

A. Yes.

Q. When did you do that?

A. Before the trial.

Q. How long before the trial?

A. Oh, a day, maybe a couple of days. I can't give you the exact date. It may have been the day before the trial.

Q. Did anyone suggest to you to read that article?

A. Someone discussed it with me, yes.

Q. Do you mind telling us who it was?

A. I believe it was Reverend Sanders. You see, the night before the trial -- This is not exactly responsive, but Mr. Harrison, my rector, called me on the telephone, and said that I had been very much in his thoughts since the arrest was made and he knew a great burden was placed upon me, and he wanted to let me know his thoughts were with me, and he very definitely stated he was praying for me, and I told him that I had very grave thoughts in my mind as to whether I should recuse myself in this particular situation, and he gave a quotation -- I have forgotten where it's from -- which in effect states that a man who seeks to martyr himself is the greatest sinner of all, and after talking to him, I called Reverend Sanders and told him of my doubts and whether

I should recuse myself, and he assured me that from the church standpoint I should have no hesitancy to go forward, and there we discussed this article of religion.

Q. Well, now, these people were charged with an offense under the criminal law, weren't they?

A. Yes.

Q. They weren't charged with any offense of any canon law?

A. Well, perhaps you misunderstand my purpose in reading that article of religion. I did not read that article from the standpoint of judging a guilt or innocence.

Q. Well, why did you read it?

A. I was there facing fifteen priests of my faith. I was reading it from the standpoint of my sitting in legal judgment on them; that under the articles of religion they were there as individuals, not as clergy; that they submitted themselves to the jurisdiction of the civil magistrate. My purpose in quoting that article of religion was addressed to the proposition of whether I, as an Episcopalian, should have been the one to try it, and regardless of their guilt or innocence.

Q. Didn't you actually say in Court that these priests were guilty of violating that article?

A. I believe so, and that was as stated in my opinion.

BY MR. RACHLIN: We are finished.

(I have read my testimony on the foregoing pages, and same is true and correct.)

STATE OF MISSISSIPPI
COUNTY OF HINDS

JAMES L. SPENCER

SWORN TO AND SUBSCRIBED BEFORE ME, this ____ day of

______________________, 1963.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

____

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

APPEARANCES: CARL RACHLIN, ESQ.
280 Broadway
New York, New York
ATTORNEY FOR PLAINTIFFS

E. W. STENNETT, ESQ. and
THOS. H. WATKINS, ESQ.
Jackson, Mississippi
ATTORNEYS FOR DEFENDANTS

DEPOSITION OF JAMES G. JONES
Jackson, Mississippi
February 15, 1963

BE IT REMEMBERED that the depositions of the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., as adverse parties were taken by the defendants in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above styled and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 8:00 a.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action on January 15, 1963, and pursuant to the following additional stipulation, to-wit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the plaintiffs may be taken before Mildred A. Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of

said depositions, same shall be presented to one counsel of record for each of the parties and thereafter to each of the plaintiffs for reading and signature, which signature and verification may be had before any notary public or other officer qualified to administer oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency, or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party

reserves the right to object to otherwise inadmissible matters elicited in the course of the depositions.

APPROVED:

Carl Rachlin /s/
Of Counsel for Plaintiffs

APPROVED:

Thos. H. Watkins/s/
Of Counsel for Defendants

JAMES G. JONES

having been first duly sworn, testified as follows:

BY MR. WATKINS:

Q. Please state your full name?

A. Father James Garrett Jones.

Q. Your age?

A. 36.

Q. The extent of your education?

A. Grade school, secondary education, B.A. degree, Canterbury College, B.D. Degree, Nashotah Seminary, graduate work at Yale, DePauw, Butler and Chicago Universities.

Q. Are you married, sir?

A. I am.

Q. Please give me your wife's maiden name?

A. Kathryn Howell.

Q. Do you have children?

A. Five of my own and one foster child.

Q. Please give me their ages?

A. Janet Marie, 23. She's my foster daughter. James Garrett, 11; John Francis, 9; Mary Kathryn, 7; David Gregory, 6; Stephen Michael, 3.

Q. You are an Episcopal minister?

A. I am.

Q. Please give me the names, locations of the churches you have served, and the dates that you served each?

A. Lay Vicar of St. George's Church, Indianapolis, 1947 to 1950; Lay Assistant of St. Andrews in Great Lake, Illinois, 1952; Curate at Church of the Epiphany, Chicago, 52-54; Chaplain of Cook County Jail, Chicago, 1952 to 1958. You will note there was a two year overlap when I was on both staffs. Director of Prison work for the Diocese of Chicago, 1958 to 1963.

Q. And that is your present assignment?

A. Yes, it is.

Q. What were the nature of your duties for your church in September of 1961?

A. I was in charge of supervising the prison chaplains and directing a staff of fourteen people running St. Leonard's ex-prisoner release center.

Q. Who was your immediate superior?

A. The Lord Bishop of Chicago.

Q. And his name, please?

A. Gerald Francis Burrill.

Q. Do I understand that at the time of your arrest in Jackson, Mississippi, on September 13, 1961, you were a passenger in interstate commerce?

A. You understand correctly.

Q. Do I further understand that you were on the way to a church convention in Detroit?

A. You further understand correctly.

Q. I want to ask you whether Exhibit "A" to the deposition of Reverend Pierson correctly describes the purposes of the pilgrimage?

(Witness looks at instrument)

A. This correctly describes the general purposes of the pilgrimage.

Q. And you had seen this before the trip started, had you not?

A. I had not. I saw it after the trip started.

Q. When and where did you first see it?

A. I think on the bus between New Orleans and Jackson.

Q. You were familiar with it before you reached Jackson?

A. I was.

Q. You have heard Reverend Pierson's deposition and Reverend Breeden's deposition with respect to the various stops that you made and what occurred on the pilgrimage. Are you willing to adopt their testimony as your own with respect to those acts?

A. With specific respects to where we stopped, is that the question?

Q. Are you willing to adopt their testimony as your own in its entirety with respect to what occurred on the trip?

A. Deleting, of course, what personally was the situatim in the two respective gentlemen's positions.

Q. Was there anything incorrect about their testimony that you would like to correct?

A. Only that my position was different. For instance, I got there later, and I can't stipulate to what happened at that meeting in Jackson in that I didn't arrive ---

Q. You mean New Orleans?

A. In New Orleans. -- until it was almost over. In other words, those situations that I was present in, along with these two gentlemen, I will stipulate.

Q. And that begins after the meeting they described in New Orleans?

A. About five minutes before it was over.

Q. When you got to the meeting, or after you got to the meeting, did you have an occasion to meet Reverend Wyatt Walker?

A. I did not. I went out to dinner.

Q. Did you have an occasion to meet James McCain?

A. I did not, and I never have heard of him.

Q. Have you ever met Tom Gaither?

A. I have.

Q. Where?

A. In Jackson, after I was released from your jail.

Q. And what day was that?

A. I am just trying to remember. I can't remember whether I did nineteen days in your jail or 21 days, but it was either the 19th or 21st day after I was arrested on the 13th of September.

Q. How does our jail compare with your jail in Chicago?

A. It has some very interesting comparisons. I think it is cleaner. I think your food is poorer. Your officers are about equal, and there are some interesting internal prisoner mores which I found different.

Q. Were you or any of the other members of your group mistreated in any way in our jail?

A. It was first and originally a mistreatment even to be there in that I was illegally arrested and convicted, and in a moral situation even to be there; so my mere presence was --

Q. I don't believe that was my question. I asked you if you were mistreated in the jail?

A. Every second that I was there was an existential position of mistreatment by my very presence, because I had no business being there.

Q. Other than that feeling of yours that you were wrongfully in jail --

A. I might add it is more than my feeling because I have been so proved in an appeal, so it is more than a feeling. It's a legal statement.

Q. Were you physically mistreated in any way?

A. No, sir, except that I lost 19 pounds from the lack of food, or the inability to eat the food that was served, but you wouldn't consider that other than the normal mistreatment of any prisoner who eats that kind of food.

Q. Are you saying the food was not fit to eat?

A. I am. Black-eyed peas and sow belly, that I can't imagine anyone eating.

Q. How did you happen to be on the pilgrimage?

A. In terms of intention? Why was I there? Or physically how did I get there?

Q. No, no. How were you selected or invited, or were you invited or did you invite yourself?

A. I invited myself after one of my friends had told me that he was going to go.

Q. And who was that?

A. Reverend Robert Paige Taylor.

Q. And without any invitation or suggestion from ESCRU, you asked to be permitted to go?

A. That is correct.

Q. What did you do - take a leave from your duties in Chicago?

A. We have a very fine organization, which we call organization in depth, and when one of our members is on leave or away, immediately our organization moves in and fills his position in depth, and I took a leave.

Q. Did you have any written communications with any officer or person connected with ESCRU before the trip?

A. I wrote requesting permission to attend.

Q. Do you have either a copy of your letter or the original of their reply?

A. In my files in Chicago.

Q. But not with you?

A. No, sir.

Q. Have you had any other written communications with ESCRU?

A. Yes.

Q. Do you have any of those with you?

A. I do not have.

Q. Did the other members of your group fill you in on their instructions or talks they had received in the New Orleans meeting?

A. No, we weren't talking in New Orleans. On the bus, you mean?

Q. Yes.

A. No.

Q. Or before you left New Orleans?

A. No.

Q. They didn't tell you what you might expect when you reached Jackson?

A. No.

Q. They didn't give you the benefit of the advice that had been given them as to how to counteract possible violence in Jackson?

A. No. Apparently they didn't need to because there wasn't any.

Q. But apparently somebody in New Orleans thought there was?

A. There are all kinds of strange people in the world, aren't there?

Q. Would that be your description of that meeting in New Orleans, a group of strange people in the world?

A. It's hard for me to say, but I didn't attend except for the five minutes.

Q. After you reached Mississippi, did anyone urge you or your group, in your presence, not to subject themselves to arrest in the bus station at Jackson?

A. Reverend Mr. Allen, in All Saints College at Vicksburg, suggested that this was a possibility and suggested that we should bypass Jackson. The problem was that there was no way to bypass Jackson, in that all bus lines converge and leave from this city.

Q. I understood that your chartered bus was originally for a point beyond Jackson?

A. That is correct, as you stipulated - as you heard in the stipulation which I have already made, and which will mean that I am merely re-answering something which has been stipulated, but I am willing to do this.

Q. Fine.

A. Financially, when you can put 37 people on a bus, it is a good deal. When it drops beneath 30, it is cheaper to take public transportation. Since only 28 showed up, we used the chartered bus for the first period of the trip which demanded side excursions into St. Martin's, into All Saints, into the parish in McComb, and decided to let the bus go at Jackson, at which point we would use public transportation because our next stops were directly on public transportation routes, namely, St. Mary's, St. Andrews, secondary schools in Chattanooga, Tennessee, and Sewanee Seminary and the University of the South.

Q. What was the initial point to which the bus was chartered?

A. The first point it was chartered to was St. Martin's Church outside of New Orleans.

Q. I understand that. How far did you charter the bus originally to take you?

A. The original plan was that it should go through to Detroit, and we changed our minds and chartered it only to Jackson because of the lowering of numbers of men who came.

Q. Detroit was the answer I was trying to get. In other words, it was originally chartered to Detroit?

A. Oh, I thought you said the initial, excuse me. Original would be Detroit. I might add that I made none of these arrangements of chartering, saw no contracts, talked with no bus companies, and the only evidence which I am giving you in terms of where the bus was going, where it was chartered, how much it cost or anything else is hearsay on my part.

Q. You knew before your trip of the violence which had resulted from groups which called themselves freedom riders and who went into Alabama, did you not?

A. I had read of such in the papers.

Q. You also knew that hundreds of people who called themselves freedom riders had already visited Jackson?

A. I had read that in the papers also.

Q. Did you endorse and approve the purposes and activities of those groups which called themselves freedom riders?

A. Publicly, no.

Q. Privately?

A. Privately, yes, with some exceptions, if it were true some of the accounts I read of the kind of people that your papers and authorities claimed were involved. For instance, I have heard charges of prostitution, sexual delinquency, of all kinds of Communists. I could not even privately approve of those kinds of people doing anything except changing their ways, much less freedom riding.

Q. Then, as I understand it, you approved privately of what they were doing, but you did not approve of the individuals involved if the newspaper accounts were correct?

A. I approved privately of those bona fide citizens who were exercising their civil rights in interstate transportation under the Constitution of our United States of America. I disapprove privately of certain individuals who were involved in those groups because of the alleged kind of people that they were.

Q. You would not approve privately or publicly, would you, Reverend, of a person exercising a constitutional right if by so doing he endangered persons or lives of other people, would you?

A. I don't disapprove, for instance, of our federal government, Mr. Katzenbach, Mr. Kennedy, or the President of our country, as they insured a constitutional right in your Mississippi University, and I am terribly sorry that bloodshed resulted, but I do not disapprove of those men's actions, no.

Q. That was not the ––

A. And, therefore, I would not disapprove of anyone exercising his legal constitutional rights. I would disapprove of those who would cause the bloodshed and would suggest that they should be the ones arrested.

Q. You recognize the old cliche that the constitutional right of free speech does not include the right to yell "fire" in a crowded theatre?

A. Justice Holmes stated that very well.

Q. By the same token, wouldn't you agree that it was wrong for a man to exercise even his constitutional right if he knew that thereby he was going to create a situation which would result in violence in a southern town?

A. I think here we move from the area of legality into the area of philosophy, and I would have to answer you that in such a situation, I would have to look at the immediate problem and find out what is the greatest good. Both situations present evil. One is that the country's Constitution is not being lived, and the other is the possibility of bloodshed. I would have to decide, as a free rational human being, which presented the least evil, and choose. I chose - In coming to Jackson, I decided that it would not be bloodshed, and it wasn't.

Q. Because some 200 freedom riders ahead of you had shown that bloodshed was not occurring in Jackson, hadn't they?

A. This certainly would help me with the evidence, wouldn't it? No one had ever been hurt.

Q. If you had been the first freedom rider to reach Jackson after the Alabama disturbances, you would not have been so sure of that, would you?

A. I might have wondered. It still would not differentiate the means under which you make such a decision. When you are facing two evils, you must choose what is the least evil, and I think the country and the rights of individuals within the country stand above the possibility of hardnosed people who would violate the Constitution of their country to preserve their own particular mores.

Q. And you felt so strongly on that subject that you thought the freedom rider activities of others and your group should be carried out even if violence resulted, didn't you?

A. I repeat, I would have to look at the particular situation and weigh the evils.

Q. You did that, didn't you?

A. I did.

Q. And you felt strongly enough about it that you thought the activities of the freedom riders and your group should be carried out even if violence did occur, didn't you?

A. I never suggested, and I would really appreciate it if you would stop trying to equate our prayer pilgrimage with a freedom ride. I resent this "You and other freedom riders"; this "stop beating your wife" questions that you continually come forth with. I resent them very much, sir. I am not a freedom rider. I participated in a religious prayer pilgrimage, and I know nothing about "other freedom riders". I have no connection with freedom riders.

Q. Did you correct Redbook's article about Reverend Pierson referring to them as freedom riders?

A. I do not subscribe to Redbook, nor do I lower myself to read that kind of magazine.

Q. You haven't read the article?

A. No, sir.

Q. Did either you or one of your group, in your presence, tell the Mayor of Jackson that you felt that the freedom rider cause was justified even though bloodshed might result?

A. I was locked up in a private cell from the 13th to almost the end of the month of September, and no Mayor ever visited me in my cell. It would have been very difficult for me to say something to him or to hear something from within that cell. No.

Q. Did you visit him after you got out of jail?

A. No, sir.

Q. You knew before you got here, didn't you, Reverend Jones, that your presence in Jackson was going to be strongly resented by some?

A. You and I are having a little trouble with this word "knowing", "cognizance".

Q. "Believing"; let's put it that way.

A. In my philosophical background, there is a difference between "possibility", "probability", "believing", and "knowing". I suspected that such might be the case. I was delighted to find out that it was not the case.

Q. And you came to Jackson suspecting that you would be arrested if you disobeyed a police officer, didn'tyou?

A. In terms of possibility, with a small degree of suspected probability, did I expect or suspect that I would be arrested. I come from a legal background in which police officers demand people obey the law, that is, the law, and I have never in my life met police officers who demanded that I do something when I wasn't violating the law, and wasn't doing something immoral. I was exercising legal rights in a moral fashion, and police officers asked me to do something, to move on, when I was doing nothing wrong, and I couldn't even begin to suspect that they would arrest a person for such a thing.

Q. You wanted to be arrested, didn't you?

A. I certainly did not want to be arrested.

Q. That wasn't part of the plan in coming to Jackson?

A. It was not part of the plan in coming to Jackson. You have heard stipulation that it was suspected that this could happen. I also took out insurance on my life in case of a bus accident, because I also suspected that could happen, and left my wife $50,000.00 worth of insurance if the bus had gone off the road.

Q. Before your arrest, Officer Nichols asked your group to move on out of the station several times, did he not?

A. After he spoke to his partner at the door, yes.

Q. Was he courteous in making that request?

A. In terms of what I am used to in being treated as a priest of the church, no. He did not say "Excuse me, Father", or "May I help you?" It was "All right, hold it right there."

Q. All right, what else did he say?

A. I don't consider this courteous treatment of a priest at all. I am not used to this from police officers in my country.

Q. What else did he say?

A. "You all come back out of there." We were in the restaurant, and then he told us to move along three times and placed us under arrest.

Q. You and your group refused to move along, didn't you?

A. There are two methods of refusal. One is an overt refusal saying such as "I will not move along." We did not overtly refuse. We passively refused by saying to the officer that we were interstate travelers, we had our tickets, we were on our way to Chattanooga, and we wanted to eat before we got on the bus. The results of our passive refusal, that is, continuing to say to the officer, "Where are we breaking the law? Why are you telling us to do these things? We do not understand." The results of this passive resistance or refusal ended in arrest, but I would certainly distinguish between an overt refusal and a passive refusal.

Q. Upon his arrival, did Captain Ray ask your group to move on out of the bus station?

A. Yes, he did, interestingly enough after we were under arrest. He never placed us out of arrest, so it was sort of interesting how we could have obeyed him.

Q. Did you recognize the fact that he was the senior officer present?

A. I recognized the fact that he had on a different kind of hat and uniform and was called Captain, although I did not know the hierarchy, so Captain could have been something lower. He seemed to be a senior officer.

Q. When he asked you to move on out of the station, would you have done so if you had not been of the opinion that you were already under arrest?

A. It is hard to say because we asked him and told him the same things we had told the two previous gentlemen, and that is that we were interstate travelers and that we wanted to eat and that we were ready to catch a bus just after noon, and in the daze of having now a second officer come along and begin the same sort of questioning that you had just gone through with the first ones, and find yourself under arrest, it is very hard to say what I might have done. It is quite conjectural, you can see, in that situation.

Q. Didn't he go further than that, Reverend, and didn't he say, "Now, if you men will come with me, I will take you safely and put you on your bus."?

A. Probably not those exact words, but the context is true.

Q. Why didn't you go with him?

A. Because I was hungry. I was not breaking the law, and I was not acting immorally, and I considered it an affront on the part of a police officer to institute his own personal feelings into a legal situation. There was nothing illegal happening, and he had no business bothering us.

Q. Then your refusal to obey their order was an intentional and deliberate act on your part?

A. I was a free agent. I was not suffering under any kind of psychosis or neurosis, so, therefore, all of my acts, any act of my will is an intentional act, and all of my acts are deliberate acts unless I am declared mentally ill, and my passive refusal by asking him if we could please eat was an intentional and deliberate act to eat. I hoped that he would consent, and let us eat, and let us go our way. He refused, placed us under arrest, and put us in your jail.

Q. You had every reason to believe that your refusal to obey would result in your arrest, didn't you?

A. Not from my background. I had every reason to believe that a police officer would not imagine arresting a person who was not violating the law.

Q. Did it ever occur to you that the failure to disburse and move on upon an order to do so by a police officer was a violation of the law?

A. No, sir, and it is not a violation of the law. A police officer cannot order you to do something which is in contrast to the legal situation. If a police officer comes and tells me to jump off a bridge, I am sorry if he's a police officer, but he is asking me to do something that is wrong.

He was essentially asking me to leave his segregated restaurant because I was with a priest of another race. He was doing something which was immoral and illegal.

Q. Did he say that?

A. Later.

Q. Who?

A. Pardon?

Q. Who said that later?

A. Captain Ray. We talked about this situation in jail. We talked about it with the detectives.

Q. What did he say?

A. He said this was a - Let me see if I can think of the word. He said, "I have nothing against you personally, but you cannot come down here and change our ways."

Q. Did he say anything else?

A. On that particular occasion, no, though I was visited by him most everyday, and we said many things to each other.

Q. Well now, you have made the statement that you were put out of the waiting room and arrested because you were in the presence of members of the other race or in the company of another race.

A. Everybody knows this is so.

Q. Then you made a statement that indicated that Captain Ray had made such a statement to you. Now, I want to know whether that is true or not. I want to know when and who was present, and I want to remind you that you are under oath.

A. Yes, and thank you for reminding me. I know I am under oath.

Q. Yes?

A. Captain Ray said --

Q. When and where, first?

A. In the jail, after we were arrested, days later, that this was - Of course, it was a matter of "I have nothing against you personally. You cannot come down here and change our ways. People will not --" I don't remember the exact words. It was essentially "People will not approve of Negroes and whites eating together."

Q. And did he every say that that was the reason for your arrest?

A. No.

Q. You expected to be arrested, didn't you, Reverend?

A. I expected not to be arrested.

Q. Wouldn't you have been greatly disappointed if you had not been arrested after coming all the way to Jackson for that purpose?

A. I didn't come to Jackson for that purpose, and again you are coming off with these "beating your wife" questions. I did not come to Jackson to be arrested. I came to Jackson to transfer buses to go to Chattanooga and to go to Detroit. I had paid $150.00 for an exhibit of the work that I am in in prison work in Detroit, which sat there unattended during the whole convention. Would I have invested that kind of money and sent all the equipment and material to Detroit to exhibit if I had intended to come to Jackson and become arrested as a prisoner in your jail? I intended to pass through here like a breeze. I would have been in that waiting room about 35 minutes and on the bus and gone.

Q. Why didn't you make bond and leave as soon as you were arrested?

A. I didn't have the money.

Q. Were you unable to raise the money?

A. I was personally unable to raise it, and my friends in Chicago finally raised it. The money arrived the day before - the evening before I finally bonded out. When I got the money I left.

Q. And there was no desire on your part because of your connection with jail work in Chicago to stay in the Jackson jail in order to study jail conditions here?

A. I think that I have arrived at a point in life where I pretty well understand jail conditions and don't have to do time in order to do this. No, there was no desire that I stay and do that.

Q. That was a new experience for you. You had never exactly studied a jail from the inside looking out, had you?

A. I was arrested once in my life in the Navy, and spent an evening in jail, but other than that it was a new experience. Our prison situation in Chicago is much different. I think you would quickly see that high security prisons like Stateville Penitentiary, which is similar to San Quentin or Sing Sing, that you are not going to learn much about that kind of situation in a local city jail, and our county jail, at which we have all kinds of prisoners, even electrocuting right in the jail, there is a different situation than in your local jail; and I would have no reason to study this kind of a jail for my work.

Q. What attorneys represented you in your trial in Municipal Court?

A. Attorny Young. I think his first name is Jack, and assisted by Attorney Carl Rachlin.

Q. Did you request a jury trial in the City Court?

A. No, nor was it offered.

Q. Did your attorneys, in your presence, request a jury trial?

A. No, nor was it offered. It was never publicly stated that we even had that right.

Q. You seem to be so well posted on the law in most any state in the union that I would have suspected that you might have known that you were entitled to a jury trial?

A. You would have thought that except that you wonder about all kinds of procedures after you have been arrested for nothing.

Q. And I would certainly have thought that your two capable lawyers would have known you were entitled to a jury trial if you had wanted it?

A. You would have to ask them. I couldn't speak for them.

Q. Did you testify on your own behalf in municipal Court?

A. I did not.

Q. Do you take the position that the defendant, James L. Spencer, the Judge of the Municipal Court, acted in concert with the other defendants to intentionally bring about your arrest?

A. There is a possibility of this.

Q. I didn't ask you that. I asked you was that your position?

A. My position is that there is a possibility of this.

Q. Do you have any evidence that that took place?

A. Nothing external. Only my internal circumstantial feelings about the situation. I learned, after I was locked up, for instance, that the police department knew we were coming. Captain Ray said, "Where were you? We thought you were getting here the day before." So apparently, there was knowledge of our intended coming. I can conjecture the possibility that if there was knowledge of our intended coming, there might also have been the possibility of knowledge of arrest and conviction, a gentleman's agreement.

Q. You had a good press operating. Your activities before you reached New Orleans were publicized, weren't they?

A. Well, I have heard you say that. I didn't hear the radio nor did I see any papers regarding this.

Q. You didn't hear the pilgrimage mentioned in any news media?

A. I did not.

Q. Does there exist in your church a separate but equal parish system in the north and in the south?

A. Sinfully, yes.

Q. Have you ever forceably tried to alter that situation contrary to the wishes of the authority involved in any particular church?

A. It has been somewhat plain to me that you are unfamiliar with the authority of our church. Different than perhaps many religions you know of, the authority of our church rests solely in the Bishops, and authority of the Bishops rests solely in Bishops' Meeting Congress, and House of Bishops, and every ten years all of the Bishops meeting under the direction of the Archbishop of Canterbury in England. It is their stated position since I can remember in the Episcopal Church that segregation and separation is sinful and contrary to the law of God and Jesus Christ. Therefore, I could not have been operating against the wishes of any of my superiors if I had, under any circumstances, attempted to bring the church from its sinful state of equal but separate facilities.

Q. Let me ask you this. Have you ever forceably attempted to integrate a segregated church or school of your denomination?

A. By moral persuasion, by financial persuasion, and by legislative lobbying, yes.

Q. But not by acting directly contrary to the expressed wishes of any priest or rector of any church or school?

A. His wishes are irrelevant in my church. The wishes of the church reside in the Bishop.

Q. I don't think you have answered my question. Have you ever physically integrated a church or school contrary to the expressed wishes of the preacher in charge or the rector?

A. I hope you won't be upset with me, but I am having difficulty with this question because of our differences in authority here. I have attended - I have been an Episcopalian all my life, my father was an Episcopalian Priest, my grandfather was an Episcopalian Priest, so I have been attending churches interracially and single racially all my life. I don't know whether any of the particular ministers and priests in charge had feelings one way or the other, and I repeat it's irrelevant as to what their feelings were because the authority of the church lies in the Bishops who have spoken to this issue.

Q. Let's take any white segregated church or school operated under your church's system. Have you ever attempted to change that situation from a segregated institution to an integrated institution contrary to the wishes of the person charged with the responsibilities of operating that institution?

A. Could you please - I have answered, bymoral persuasion, by financial persuasion, by legislative lobbying. Now, is there some other way that you are thinking I could have done it?

Q. Have you ever, for instance, taken a segregated church or school and tried to bring an equal number of the other race into it and thereby physically integrate it?

A. No.

Q. Well, wecould have saved a lot of time if you had understood me ---

A. Well, that word "equal" is wonderful. I mean, there's no problem now. It's no.

Q. You complain of separate housing conditions for whites and colored people?

A. Yes, I do.

Q. And does that situation exist in your home state and community?

A. In my home state, yes. In the City of Chicago, yes. In my own particular community of Chicago, no.

Q. And were those existing in Illinois and in some parts of Chicago when you came on this pilgrimage?

A. Oh, yes.

Q. You didn't think, Reverend, that your activities could have better been spent by trying to correct what you thought were improper discriminatory practices in Illinois and Chicago rather than coming to Jackson?

A. I didn't come to Jackson. I came to New Orleans to participate in a prayer pilgrimage, from New Orleans to Detroit, in order to learn about segregation in order that I could be better equipped to do a better job in my own community. I came here to Jackson, and to all other places we stopped, to learn.

Q. Well, you knew what separation or segregation was before you came down here, didn't you?

A. Not to the extent that I knew it after I left here.

Q. Well, you had the benefit of some nearly 300 people that had been to Jackson before you got here, hadn't you? What did you learn that you didn't already know?

A. The depth of feeling. For instance, today is a very mobile group of people. The Airlines for instance, are congregating around Chicago, which means we have many people from Mississippi and Louisiana, Kentucky, Tennessee who are members of our parish now. This is a new thing. You know, it's post World War II that this great flux of people has taken place, and I could not understand many of their feelings, for instance, when they moved from Jackson to Chicago, and would object to a church that was integrated, and the poor people would look everywhere trying to find one that was not occasionally, or they might even leave the Episcopal Church, which, from our viewpoint, is very unsatisfactory. I think I have more feeling now, more understanding of the depth of their neurosis. I might add that I had never been south before, and this was an opportunity for me to learn, and I did learn a lot.

Q. Have you ever attempted to forceably change the separated or segregated living area in Illinois or Chicago from a segregated area to an integrated area?

A. By moral persuasion, by financial persuasion, and by legislative lobbying, yes,

Q. But never by physical acts?

A. Well, all those are physical acts.

Q. But never by physical acts of moving members of the opposite race into a separated area?

A. No. I don't own property or a moving company.

Q. On other details that I haven't gone into with you, I understand that you are willing to accept Reverend Pierson's and Reverend Breeden's testimony, is that correct?

A. May we break a minute while I check my notes? May I consult with my attorney? Is that permissible?

BY MR. WATKINS:

Surely.

(Consultation off the record)

BY THE WITNESS:

A. I would like to answer that by saying that there is only one area that I am concerned about, and I don't know whether to stipulate or not, because I don't remember all the questions concerning this question of concert in regard to His Honor James Spencer. There are some problems - some concerns that I have in this area.

Q. Well, what would you like to add or say in connection with that?

A. I would like to say that there are two levels of possible concert that I suspect. The one you've already gone into of the possibility of concert leading to arrest, but there is also the possibility of concert leading to conviction after arrest.

Q. Do you have any evidence to support your suspecion, and I gather that's what it is, a suspcion?

A. I have only circumstantial evidence of my own suspicions which I would like to mention.

Q. All right.

A. I've met many loyal Episcopalians all my life, but

I have never known one who carried with him, as a normal practice, a pew sized book of common prayer from a church pew or from a library shelf, and I found it extremely interesting that Judge Spencer carried such a book, which is the official prayer book of my church, into the Courtroom with him. It certainly makes me think that he had had to give this matter consideration previous to having heard any evidence.

Q. If you were a judge and a layman in the Episcopal Church, and you knew that the following day that you were going to have to sit in judgment on fifteen ministers of your church, you would have thought it strange for you to refer to your articles of worship, or whatever you call them, or to bring those to the Courtroom with you?

A. Yes, I would find it extremely strange. It has nothing to do with the legal situation at all. I found it even more further strange that the State's Attorney - I think you call him the District Attorney --

Q. City Prosecutor.

A. -- City Prosecutor also quoted from the same 39th article as did the Judge quote from, which makes me suspect that perhaps the City Prosecutor and the Judge had had a prayer book discussion previous to the trial. In other words, I find it statistically strange that both the prosecution and the judge found it necessary to refer to my book of worship in a legal trial.

Q. You don't give them credit for each being diligent in research and religious matters as well as civil matters prior to a trial of fifteen ministers?

A. I find it extremely suspicious. I have no question that it involved diligence, but diligence of concert.

Q. Do you have any evidence ---

A. The prayer book was there on the Judge's bench, and the attorney quoted from that prayer book.

Q. Do you have any evidence that the prosecutor or the judge had discussed that with each other prior to your trial?

A. Only that they both referred to one paragraph on one page out of 700 pages.

Q. And which one referred to it first?

A. I think the prosecutor, but I am not sure.

Q. Well, the prosecutor having referred to it, wouldn't it be natural for the Judge to follow his reference to it?

A. It happened in the most natural fashion I can think of. The judge opened up the prayer book that was already on his bench.

Q. And is that all of the evidence you've got for making the charge that these defendants acted in concert?

A. There is a second thing I would like to mention.

Q. Surely.

A. As we entered the bus station, as I passed the two officers standing directly opposite the front door, one of them said to the other -- and I don't know which one -- "Shall we take them now or later?", which again, as I think it over, makes me suspicious that they were fully prepared to arrest us and take us.

Q. Who made that statement?

A. One of the officers made it to the other.

Q. You mean one of these two men, either Griffith or Nichols?

A. One of these two men. I don't know which one.

Q. One of these two men made that statement in your presence?

A. As I walked by, I heard it said.

Q. Heard it made by one of these two men?

A. Right. The third thing that makes me feel that there could have been concert is the questions of, both by Captain Ray and the detective that interrogated me in the police station, asking us where we were, they had been expecting us the day before; and it seems to me that there is the possibility that everything was pretty well set up to accomplish just the way it was accomplished.

Q. Again, I remind you that if your arrivalin Jackson was of enough interest to be on the radio on the news, it could hardly be kept from the police department, could it, to be expecting you?

A. Well, I didn't hear any such.

Q. Well, if it was widely publicized, that would explain that?

A. It might. It might also be concert.

Q. Now, do you have any other evidence of concert?

A. Not that I can remember.

Q. Now, in other respects, are you willing to adopt the testimony of Reverend Pierson and Reverend Breeden?

A. I am.

BY MR.WATKINS: I believe that's all.

I have read my testimony as set out on the foregoing pages, and the same is correct.

STATE OF ____________________

COUNTY OF ____________________

____
James G. Jones

Sworn to and subscribed before me, this ____ day of
________________, 1963.

____
Notary Public

I, Mildred A. Baker, Notary Public in and for Hinds County, Mississippi, hereby certify that to the best of my skill and ability, I reported in shorthand and on tape recorder all the questions asked and the answers made by the parties stated in the foregoing matter, and that the foregoing is a full, true and correct transcript of the testimony so taken pursuant to the stipulation heretofore set out.

This _____ day of March, 1963.

____

Mildred A. Baker

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL,	PLAINTIFFS
VS.	CIVIL ACTION NO. 3315
J. L. RAY, ET AL,	DEFENDANTS

APPEARANCES: CARL RACHLIN, ESQ.
280 Broadway
New York, New York
ATTORNEY FOR PLAINTIFFS

E. W. STENNETT, ESQ. and
THOS H. WATKINS, ESQ.
Jackson, Mississippi,
ATTORNEYS FOR DEFENDANTS

DEPOSITION OF D. A. NICHOLS
Jackson, Mississippi
February 15, 1963

BE IT REMEMBERED that the depositions of the defendants, J. L. Ray, J. O. Griffith, D. A. Nichols, and James L. Spencer, as adverse parties were taken by the plaintiffs in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above stied and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 1:00 p.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action and pursuant to the following additional stipulation, to-wit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the defendants be taken before Mildred A. Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of said depositions, same shall be presented to one counsel of record for each of the parties and thereafter to each of the defendants for reading and signature, which signature and verification may be had before any notary public or other officer qualified to administer

oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party reserves the right to object to otherwise inadmissible matters elicited in the course of the depositions.

APPROVED:

Carl Rachlin /s/
Of Counsel for Plaintiffs

APPROVED:

Thos. H. Watkins /s/
Of Counsel for Defendants

D. A. NICHOLS,

having first been duly sworn, testified as follows:

BY MR. RACHLIN:

Q. Officer Nichols, you and I have met before, haven't we?

A. We have.

Q. In Court, as a matter of fact, the last time?

A. Right.

Q. Do you want to tell us your full name, please?

A. David Allison Nichols.

Q. Where do you reside, Officer Nichols?

A. 319 Windsor Drive, Jackson, Mississippi, Hinds County.

Q. And how long have you been a member of the Police force of Jackson?

A. Four and a half years.

Q. Four and a half years. And what is your rank with the Police force?

A. Patrolman.

Q. And I assume it was patrolman on September 13, 1961?

A. It was.

Q. Now, you have heard the testimony of Officer Griffith, didn't you?

A. I did.

Q. Yes. Anything particular you would like to correct or modify or change from what he said?

A. I think I would like to go through the whole thing in detail.

Q. I am sorry, sir?

A. I think I would like to go through the whole thing in detail.

Q. You would like to go through it?

A. Yes, sir.

Q. Fine; very good. All right, let's. We will do that then; swell. By the way, are you a member of the Citizens' Council?

A. No.

Q. Were you at that time?

A. No.

Q. Have you ever been a member of the Citizens' Council?

A. Several years ago, yes.

Q. When was the last time you were a member of the Citizens' Council?

A. Oh, it has been six or seven years. I haven't been since I came on the force.

Q. You haven't been --

A. Haven't been since I came on the force.

Q. Do you agree with its principles?

A. Never did know all of its principles.

Q. What's that?

A. Never did know all of its principles.

Q. Do you believe it is wrong for whites and Negroes to be together in a bus station?

A. I believe it is wrong for them to be together anywhere.

Q. Anywhere?

A. Anywhere.

Q. Well, do you think it is wrong for a Negro man to come into this room right now and carpet sweep the floor?

A. No. Not if it is in his line of duty, no.

Q. Then you don't mean at any time, then --

A. Not at any time. If it is in his line of duty in the place of business. In their social life, no.

Q. Now, do you think that Negro people are inferior to white people?

A. No.

Q. You don't think they should be together?

A. I just don't believe in race mixing.

Q. Has this always been your opinion?

A. It has.

Q. I take it you have always lived in the state of Mississippi?

A. Always, all my life; born and reared in Mississippi.

Q. Now, can you tell us about what time it was when you first saw the fifteen ministers arrive at the vicinity of the Trailways bus station?

A. It was sometime between 11:00 and 12:00 o'clock.

Q. You don't know the exact time?

A. I couldn't bring it down to the minute.

Q. Where were you standing at the time they arrived?

A. I was standing on the southwest corner of the Trailways bus station on the back ramp.

Q. On the back ramp?

A. Yes, sir.

Q. And how did they arrive, do you recall?

A. They came in, in three Dotty cabs.

Q. I am sorry.

A. They came in, in three Dotty cabs.

Q. That's the name of the cab?

A. That's the name of the cab company.

Q. Oh, I see. How do you spell that?

A. I believe it is D-o-t-t-y. I am not positive.

Q. Did you see them get out of the cab?

A. I did.

Q. Now, could you tell at the time they got out of the cabs whether there wre any whites and Negroes together?

A. I didn't pay that much attention to them.

Q. You didn't notice?

A. No, sir.

Q. Now, about how far away were you from them at that time?

A. Oh, about 40 or 50 yards.

Q. 50 yards?

A. 40 or 50 yards; something like that, roughly. I never did step it off — measure it.

Q. About 120 to 150 feet then?

A. Somewhere thereabouts.

Q. Now, when they got out of the cab did you see them do or say anything which you considered a breach of the law?

A. No, sir.

Q. Now, at the time they got out of the cabs, what did you do?

A. I walked inside the bus station — started inside.

Q. How far away from the entrance of the bus station were you?

A. Oh, from the back entrance, I was 30, 40, 50 yards, somewhere thereabouts. All the way the length of the ramp from the white waiting room down.

Q. Were you on this ramp waiting for them?

A. No, sir.

Q. Did you know what time they were arriving?

A. No, sir.

Q. Had you been told to watch for them?

A. We had heard there was a group similar to the freedom riders in town and they was expected to leave on some bus, but we didn't know what bus.

Q. Now, was there a special entrance for cars and taxicabs to come in at the place where their cabs came in?

A. They drove in the entrance where the buses usually comes in to the rear of the station.

Q. I see.

A. It's on the east side.

Q. Did cars and cabs sometimes come in there too?

A. I imagine they do.

Q. I am sorry, sir?

A. I imagine they do.

Q. Did you observe a crowd of people on the ramp, or near the ramp, or near the taxicabs?

A. No, I did not.

Q. You didn't see any —

A. I didn't see any particular crowd.

Q. Now, how long did it take you to walk from where you were to the entrance on the south side of the bus station?

A. I didn't time it; but I imagine it took a couple of minutes — two or three, something like that.

Q. Two or three minutes to walk it?

A. Something like that.

Q. How far did you have to walk?

A. Oh, about 60 or 70 yards.

Q. And you think it takes two or three minutes to walk 60 or 70 yards?

A. It could, or couldn't, according to what pace you took.

Q. What was that, sir?

A. It's according to what pace you took — fast, slow, I don't know.

Q. Were you walking at a medium pace?

A. That's been a year and a half ago, how would I know.

Q. I thought it took you several minutes?

A. I don't know how long it took.

Q. Now, when you entered the station did you enter the station before they did?

A. As well as I remember, we came in the back door about the same time when they started in the front door, as well as I can remember.

Q. At the time you entered the station were there -- about how many people were there in the station going about their regular business?

A. 10 or 15.

Q. 10 or 15. And when you entered the station, did you walk towards the place where they were?

A. Explain that question.

Q. Well, you entered from the south side of the station, along the east side of the white waiting room, is that correct?

A. That's correct.

Q. And they entered the station from the north side, is that correct?

A. That's correct.

Q. That's also along the east side of the white waiting room, is that correct?

A. I don't know whether it was the east side, or what door they came in, but they came through the north door of the white waiting room.

Q. Okay. But you are not sure whether it was toward the east side of the waiting room?

A. No, sir. I couldn't tell you which.

Q. All right. Now, you entered and they entered, you said, at approximately the same time?

A. Somewhere thereabouts. About four, five, or six steps different, either way.

Q. Uh-huh. Now, as they came in the station were they doing anything that you considered a breach of the law?

A. Well, when they entered the station, there was a large crowd came in behind them. Everybody in the station stood up.

Q. Uh-huh — 10 or 15 people?

A. I say, everybody, practically everybody stood up. And these people in the station started mumbling. A large crowd behind them was mumbling, and they started towards the restaurant.

Q. They started to walk towards the restaurant?

A. They started down towards the restaurant. And so Officer Griffith and I saw the trouble brewing, so he walked over there and stepped in front of them at the restaurant and wouldn't let them in the restaurant.

Q. Did any get through?

A. Maybe one or two. I don't know. And this crowd just, more or less, encircled them. All the crowd that came in behind them and the ones in the bus station. There was a group of boys shooting the pinball machine. They even quit shooting the pinball machine. And people started mumbling, and grumbling, and going on. And at this time we determined this group to be the cause of our trouble and since a small group was easier to handle than a large group, we asked them to move on. And that's when they refused.

Q. Now, did you speak to any of them people in the station?

A. No, sir.

Q. Well, how did you know what they were mumbling at?

A. Well, anytime you have a group in a bus station anywhere that is not giving you any trouble, and another group enters and a group follows them in, and this group in here stands up, you know there is trouble brewing somewhere. And it had been going normal before they entered.

Q. Well, were they doing the mumbling and grumbling?

A. The people in the station?

Q. Were the ministers doing the mumbling and grumbling?

A. None that I heard of.

Q. Did you see them do anything that was wrong?

A. They walked in the station and caused this disturbance.

Q. Well, how do you know it was they who caused the disturbance?

A. It's bound to have been them --

Q. It might have been them?

A. Well, how could it have been anybody else when the thing was peaceful before they came in?

Q. Well, what did they do except walk in the station?

A. Just their presence there was the cause of it. That's what my partner and I determined and I asked them to move on.

Q. Just their presence there?

A. Just their presence there.

Q. They didn't use any bad language, did they?

A. They didn't use no language at all.

Q. And they didn't threaten anybody, did they?

A. Well, they threatened the peace by being there, in the manner they was there.

Q. What was the manner -- describe their manner?

A. Well, Jackson had been in an uproar for some time with freedom riders. And they was advertised as coming in, advertised as being in Jackson in papers and things, and, naturally, the people was curious. And when they came in, a bunch of clergymen, which was something unusual; they was on the radio and television as being clergymen, and the group knew who they were when they entered, so, therefore, when they came in, the people were in an angry mood and just them being there was a threat. So, we decided to remove the cause of the threat.

Q. Did you think that the people of Jackson, the number that were there in the station -- and, by the way, how many people followed them in?

A. Oh, I would say, 20, 25, maybe 30.

Q. Now, were there any women in this crowd?

A. I didn't notice.

Q. You couldn't tell?

A. I didn't notice them. I was watching the clergymen, more or less.

Q. I see. You were watching the clergymen, more or less?

A. Staying between them and the clergymen. The clergymen was huddled, more or less, in one group and I was, more or less, standing between them and the clergymento prevent any foul play.

Q. Did you believe that the people of Jackson would attack fifteen clergymen?

A. In the mood they was in, I believe they might have.

Q. Do you know of any instance where the people of Jackson had attacked clergymen?

A. We have never had a clergyman to come in, in the maner they came in, in the city of Jackson, that I know of, when the people were in the mood that they were in.

Q. What was the manner they had come into the city of Jackson?

A. Well, they had been advertising in the paper there was a group similar to the freedom riders moving through Jackson.

Q. How were they similar to the freedom riders?

A. Well, they was coming in. They had been advertised in the papers as freedom riders, I believe. I am not positive. But, I believe, the papers called them freedom riders. I am not positive of that.

Q. Well, what in your mind made them freedom riders?

A. In my mind -- well, anybody that was coming through causing trouble at that time, like the freedom riders had, was, more or less, freedom riders.

Q. What were they doing that was causing trouble?

A. Well, the ads they sent ahead that the papers had put out and everything. I didn't know but what they came in just like the freedom riders.

Q. What was the similarity between them and freedom riders?

A. They was -- the freedom riders always let us know they was coming. And they had notified they was coming, so therefore we, more or less, thought they were freedom riders.

Q. Now did you know what time they were coming to the station?

A. We did not.

Q. You did not know?

A. We did not.

Q. By the way, what time did you arrive at the station -- at the terminal -- at the Trailways bus station that morning?

A. I am not positive. I am not sure. After I came on tour duty, I worked a while and then I got a call to assist Officer Griffith -- go to Trailways to assist Officer Griffith on patrol at the station at 8:30, 9:00 -- maybe 9:30.

Q. Who called you?

A. I was called by the radio dispatcher and told to go by. But who gave him the orders, I don't know.

Q. What did he tell you?

A. He told me to get out of the car I was patroling in and assist Officer Griffith at the Trailways bus station.

Q. Did he tell you why?

A. No, he did not.

Q. Did he tell you that the fifteen Episcopal clergymen were going to arrive?

A. No, sir.

Q. He just told you to go?

A. We are in the habit of obeying the order of the radio dispatcher, because the Chief on down will back him up on that order. So, we obviously obey their orders. If he gives us a call, we answer it.

Q. That wasn't in your normal place of duty, then?

A. No, sir.

Q. Because you heard Officer Griffith say he had been on duty there for three weeks before?

A. That's right.

Q. Do you know whether there were normally two people there?

A. There have been as high as 10 or 15 there.

Q. For the last couple of weeks before September 13th?

A. At times there was 2, 3, 4, according to how many freedom riders they was expecting.

Q. I want to pursue one thing with you a little further, Officer Nichols. What was there about what the fifteen clergymen said or did which made you think they were similar to freedom riders?

A. Well, the manner they came in in; the manner the papers had played it up, that there was a group coming to Jackson, and we just assumed they were freedom riders.

Q. Was the manner of their coming in because they were whites and Negroes together?

A. That probably could have been it, in the opinion of the people of Jackson.

Q. When you saw them come in, you saw whites and Negroes together?

A. I saw colored and white together.

Q. Coming into the white only part of the station, is that right?

A. That's right.

Q. And colored people weren't allowed in that part of the station, is that correct?

A. It is generally used by whites.

Q. But aren't colored people asked to leave if they come in that part of the station?

A. I have never worked there befre.

Q. Oh, you have newr worked there before?

A. No, sir.

Q. Have you ever worked over at the Greyhound station?

A. One or two times.

Q. Well, do you know whether over at the Greyhound station colored people are allowed in the white part of the station?

A. No colored ever entered while I was there.

Q. I see. None ever entered while you were there?

A. No, sir.

Q. And you had never before worked at the Continental Trailways station?

A. No, sir, not to my knowledge.

Q. Well, do you think it is wrong for a colored person to enter that part of the station?

A. Well, that depends on what his business is.

Q. Suppose his business is to take a bus to Memphis.

A. I have seen people in there which you couldn't tell from colored or white. I have seen people in there of all demoninations and nationalities just about. I used to eat supper down there every night when I was working down town; and I have been through there and you would see people and wonder about what they were. So, they were sitting there.

Q. But you knew that colored people normally were not permitted to eat in the restaurant in the white waiting room, isn't that right?

A. I did.

Q. And you knew they were normally not permitted into the white waiting room?

A. I did.

Q. Did you think it was wrong for three Negro clergymen to enter this part of the station?

A. That goes back to the manner they entered in.

Q. Well --

A. The crowd followed them in. Causing a disturbance then like they was, it wasn't right for any of the ministers to be there because they was causing a breach of the peace.

Q. What was it -- I would like to ask what was it they said or did which caused a breach of the peace?

A. Their very presence of being there, with Jackson in the turmoil it was in. Jackson was in a turmoil at the time from freedom riders. And any time a group like that entered a bus station, people came from all around. I don't know where they came from, it just looked like they popped up. It caused a disturbance and they was the cause of the disturbance. So, we were to remove the disturbance, remove the cause, and let things go back to normal.

Q. Now, what kind of a sign is there in front? I withdraw that. What kind of a sign was there in front of the entrance that they entered on Pascagoula Street?

A. To the best of my knowledge there is a sign up there, saying, white in front of the white waiting room, and in front of the colored is colored. What else is there on that sign, I have no knowledge.

Q. Well, is there a sign there now?

A. I haven't been by there and stopped at the station in, oh, a month and a half or two months, and I couldn't tell you.

Q. Was there a sign there a month and a half or two months ago?

A. I couldn't tell you that. I believe it is, but I am not positive.

Q. If I told you there was a sign there today, would you say I was correct?

A. No, I wouldn't, because I don't know. My beat is north now, and I seldom have a chance to go by the Trailways.

Q. Now, do you recall when they entered the station, do you recall whether it was you or Officer Griffith who said "Shall we arrest them now or later?"?

A. It definitely was not me, and I didn't hear Officer Griffith say it.

Q. Now, were you there when he placed them under arrest?

A. I just told them to move on and they refused my order. I asked them again and they refused it. I asked if they understood my order and they said they did. I asked them if they was going to obey it, and they said they weren't.

Q. Did they say that, or just didn't?

A. I believe they said we can't. I am not positive. But they said we can't, and then they said they was not going to move on and Officer Griffith placed them under arrest. I immediately went to the 'phone and called headquarters for transportation to headquarters and they connected me on the telephone with Chief Pierce. Chief Pierce says, hold them there a few minutes, Chief Ray will be down -- at that time it was Captain Ray -- will be down in just a second. He is on his way down now.

Q. How long did it take him to come down?

A. Oh, four or five minutes.

Q. Now, what entrance was it that he used to enter the building?

A. He entered the rear door.

Q. The same one you entered?

A. Yes, sir.

Q. That is, on the southeast corner of the white waiting room?

A. He entered the south door. I wouldn't say which one of the south doors.

Q. You are not sure which one? It was on the south side?

A. It was one of the two doors on the south side.

Q. Did you see him coming in?

A. I saw him just a minute after he stepped into the station.

Q. Did he walk directly up to ---

A. He came immediately to the group of ministers.

Q. Did he stop to speak to anybody?

A. He stopped to speak to them.

Q. To the ministers?

A. Yes, sir.

Q. He didn't stop to speak to anybody that you could see from the time he entered the door up until he reached the ministers?

A. He looked the crowd over and walked straight on to the ministers.

Q. How long did it take him to walk across the floor?

A. Oh, maybe thirty seconds -- minutes. At that time things was tense and I wasn't watching my watch at the time.

Q. Now, when you called and spoke to Captain Pierce, what did you say?

A. Chief Pierce.

Q. I am sorry, Chief Pierce. What did you tell him?

A. I told him that we had the ministers under arrest at the Trailways bus station and we needed transportation to bring them in.

Q. Did you tell him there was an ugly mob there?

A. No, sir.

Q. You didn't tell him that?

A. Not that I remember.

Q. Weren't you concerned about the mob there?

A. I wanted to get between them and the mob.

Q. Did you ask any of the mob to leave?

A. No, I figured it was easier to control a small group than it was a large group.

Q. You kept the ministers inside the station then?

A. They, more or less, stayed grouped back there in a group where we, more or less, had a little control over what was going on.

Q. But you didn't ask anybody in the station to leave?

A. After I called Chief Pierce, I didn't say anything to anybody until we got them out of the station.

Q. Now, how many people could you hear mumbling inside? How many people could you hear mumbling?

A. I don't know. It sounded like a beehive.

Q. Could you see some of them mumbling?

A. Well, they was crowding in pretty close and you could hear them talking to each other.

Q. Did you ask any of them what they were saying?

A. No, I didn't.

Q. Do you know whether they were caused to collect by the fact that you and Officer Griffith had placed them under arrest?

A. I believe the cause of collection was the ministers themselves coming into the bus station.

Q. Their coming into the bus station?

A. The crowd following them in, so, therefore, I believe, that was the cause.

Q. Did you arrest anybody?

A. No, sir.

Q. Were you afraid somebody from the crowd would commit violence against them.

A. Possibly — well, it's a lot easier to control a small crowd than a larger crowd, and the ministers was the small crowd that was the cause of trouble, and we were trying to remove the cause.

Q. From the time they entered the station until the time you asked them to move on, was there anything that any one of them said or did which you considered a breach of the peace?

A. Well, them being there was a threat and we were trying to remove this threat.

Q. What was the threat?

A. Just them being there. The manner they were there. The manner the crowd followed them in and all. We considered it a threat and the people of Jackson was in such a turmoil at this time, that we was trying to remove the threat.

Q. Had you been given any instructions at any time —

A. None whatsoever.

Q. How did you know what I was going to ask you?

A. Well, "any instructions". Go ahead.

Q. — to ask Negroes to leave the white bus station?

A. No, sir.

Q. You had never received any instructions on that?

A. No, sir.

Q. But did you consider that sign out in front of the entrance of the building as your instructions?

A. That sign was put there.

Q. Who put it there, do you know?

A. I don't know. I couldn't tell you.

Q. Well, then you never noticed that sign that said "By Order of the Police Department"?

A. No, sir.

Q. You never noticed that?

A. At one time now, I know they did have one of them "By Order of the Police Department", but whether they had at that time, I don't know.

Q. Well, if it said "By Order of the Police Department", would that be then your instructions?

A. That would be my instructions.

Q. So, that if a Negro entered, it would be wrong for a Negro to do that, is that right?

A. Well, it's according to what manner they was in there.

Q. Well, if it said "White Waiting Room, By Order of the Police Department", it would be wrong for a Negro to be in there, wouldn't it?

A. Well, that white waiting room is usually used by white people and the colored waiting room on the east end is usually used by colored people.

Q. Oh. And you, yourself, believe, as you said a little while ago, that it is wrong for white and colored people to come together, isn't that right?

A. Socially, yes, sir.

Q. And come together into a bus station, isn't that true? If they are in one group?

A. Well, I didn't say that.

Q. Well, I am asking you?

A. But it's a social gathering, so therefore it could be.

Q. Well, they were altogether, weren't they? The fifteen were altogether?

A. The fifteen of them came in together.

Q. And they were obviously part of one group, weren't they?

A. They were.

Q. There is no doubt in your mind they were one group?

A. They seemed to be.

Q. Yes. But — so, therefore, you considered it wrong for whites and colored to be together, didn't you? For that group of white and colored to be together?

A. Socially, yes.

Q. Well, wasn't this a social gathering when they came into the bus station together?

A. It was, but that wasn't the cause of the arrest.

The cause of the arrest was a breach of the peace.

Q. Now, you knew that Captain Ray, then Captain Ray, now Chief Ray, had made a lot of the arrests himself, when whites and colored people had come into the Continental bus station. Did you know that?

A. Yes, sir.

Q. In fact, he generally made the arrest, didn't he?

A. He generally made the arrests on the freedom riders.

Q. Yes. And you called this time --

A. I called headquarters for transportation and Chief Pierce told me to wait that Captain Ray was on his way down.

Q. Now, when Captain Ray came in, he walked over to the group of the ministers -- did you speak to Captain Ray at all?

A. No, sir.

Q. Did you tell him that Officer Griffith had placed them under arrest?

A. No, sir. Captain Ray being my superior officer, when he appeared on the scene, he was automatically in charge and he could do as he saw fit. And he offered them a chance to move on and they refused. He offered them a chance to see them safely on the bus, they also refused. Then at this time he placed them under arrest.

Q. Well, they were already under arrest, weren't they?

A. Captain Ray has the authority, as my superior officer, to do as he sees fit, when he takes over, in charge; and when he arrived on the scene, he assumed the duty as officer in charge.

Q. Did you tell him what they had done that was wrong which caused you and Officer Griffith to place them under arrest?

A. I told them they were under arrest for breach of the peace.

Q. I thought you said to me that you didn't speak to them at all?

A. Officer Griffith did.

Q. Well, you heard Officer Griffith — you were present when Officer Griffith testified a little while ago, weren't you?

A. Yes.

Q. Well, did you hear me ask him whether he said anything to Captain Ray?

A. Oh, I thought you was talking about the others. I didn't speak to Captain Ray at all. No, sir.

Q. And didn't you hear Officer Griffith say he didn't speak to Captain Ray?

A. Officer Griffith did not speak to Captain Ray. I thought you were talking about the freedom riders when I was answering your question.

Q. So, then neither you nor Officer Griffith said anything to Captain Ray when he came over to the clergymen, is that correct?

A. No, sir. Captain Ray started talking immediately when he walked up.

Q. And you didn't tell him that they had been placed under arrest?

A. Captain Ray did not know that they were under arrest.

Q. Right. And in your view they had already committed a breach of the peace, hadn't they?

A. To me they had.

Q. And in your view they had already committed a violation of law?

A. To me they had.

Q. And yet you didn't tell this to him?

A. I did not have time to. I was watching the crowd. Captain Ray came in the back door. I imagine he observed the crowd and walked over and started talking to them. When he came in he was automatically in charge and he could do as he sees fit.

He saw the mood of the crowd and all, and his judgment was what he saw fit to do.

Q. And do you know Judge Spencer?

A. Yes, sir.

Q. Had you known him before this case?

A. Yes, sir.

Q. How well did you know him?

A. He is the Judge in City Court.

Q. Have you appeared before him often?

A. I have been on the stand in front of Judge Spencer several times to testify.

Q. Did you know him outside of court?

A. No, sir. I would recognize him if I would see him, but that's the extent. I would speak to him.

Q. Did you ever speak to him about this case?

A. No, sir.

Q. Not before the case appeared in Court?

A. No, sir — I might add that since the arrest, I have talked to Captain Ray and Attorney Travis; and after this suit was filed, I have talked to Judge Spencer and Attorney Watkins.

Q. Now, did you retain Mr. Watkins?

A. No, sir.

Q. You are not paying his fee?

A. No, sir.

Q. Do you know what his fee is, or how he is paid?

A. No, sir, I sure don't.

Q. Whose paying it, do you know?

A. I don't know. I imagine the City.

Q. In any event, you aren't?

A. No, sir.

Q. Now, were you -- you actually testified before Judge Moore, didn't you?

A. I did.

Q. And were you there when the Judge said, after your testimony, the Judge said there wasn't sufficient evidence to show a violation of the law?

A. At that time I was outside. I don't know whether I was in the hall or back in the other courtroom. But I wasn't in the courtroom.

Q. But you know he said that, don't you?

A. I heard he did.

Q. Yes. Well, you know there were no more trials?

A. They were released.

Q. Yes. You know that, don't you?

A. Yes, sir.

Q. In fact, it appeared -- stories appeared in all the Jackson papers about that, didn't it?

A. I believe it did.

Q. Do you believe that Judge Moore was wrong in his decision?

A. That's his decision.

Q. Well, I didn't ask you if it was his decision or not. Do you think it was wrong?

A. My job was done when I arrested them and then when I testified. That's Judge Moore's decision what he did.

Q. Well, Judge Moore said that there wasn't sufficient evidence to show a violation of the statute.

A. That's the way he saw it.

Q. Well, it was on your testimony, wasn't it?

A. Yes, sir, it was.

Q. Captain Ray was nearby -- waiting maybe to be called that day, wasn't he?

A. He was.

Q. And Officer Griffith was there too?

A. He was.

Q. Who tried the case for the prosecution, do you remember?

A. Jack Travis --

Q. Jack Travis?

A. -- was prosecuting attorney, Attorney Travis.

Q. All right. Did he call Captain Ray to the stand?

A. Not that I know of.

Q. He didn't call Officer Griffith either, did he?

A. Not that I know of.

Q. So the only testimony was your testimony, is that right?

A. It was.

Q. And on that testimony Judge Moore reversed the convictions, didn't he?

A. To the best of my knowledge, he did.

Q. So that -- have you given substantially the same story at that time as you gave -- as you have been telling today?

A. That was approximately -- oh, sometime ago, and to the best of my knowledge I had given the truth then and I have also testified to the truth today.

Q. Well, that trial was -- last June, May? It was last May or June. It was May, wasn't it?

A. It sure was.

Q. Well --

A. And I don't have a photographic memory to an extent, but I testified to the truth then and I have testified to the truth, to the best of my knowledge, now.

Q. Well now, since Judge Moore has given his opinion, has it caused you to change your view as to whether it was proper to arrest these fifteen clergymen?

A. If they did it again today, I would do the same thing I did that day.

Q. Even though Judge Moore reversed you last May?

A. There is no two cases alike.

Q. I see. But you would do the same thing?

A. I would do the same thing again, if the circumstances were the same, the crowd was in the mood they were, and the situation was similar to what it was, I would have to make another arrest.

Q. Make another arrest. Even though you would stand the risk of being reversed by Judge Moore again, is that the idea?

A. Yes, sir. We have a matter of minutes to make up our mind.

Q. Okay.

BY MR. RACHLIN:

No further questions.

I have read my testimony as set out on the foregoing pages and same is correct.

D. A. Nichols

STATE OF ______________

COUNTY OF ______________

SWORN TO AND SUBSCRIBED before me, this _____ day of March, 1963.

Notary Public

I, Ruby G. Ladnier, Notary Public in and for Hinds County, Mississippi, certify that to the best of my skill and ability, I reported in shorthand and on tape recorder all the questions asked and the answers made by the parties stated in the foregoing matter, and that the foregoing is a full, true and correct transcript of the testimony so taken pursuant to the stipulation heretofore set out.

This 11th day of March, 1963.

Ruby G. Ladnier
Ruby G. Ladnier

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

APPEARANCES: CARL RACHLIN, ESQ.
280 Broadway
New York, New York
ATTORNEY FOR PLAINTIFFS

E. W. STENNETT, ESQ. and
THOS. H. WATKINS, ESQ.
Jackson, Mississippi
ATTORNEYS FOR DEFENDANTS.

DEPOSITION OF J. L. RAY
Jackson, Mississippi
February 15, 1963

BE IT REMEMBERED that the depositions of the defendants, J. L. Ray, J. O. Griffith, D. A. Nichols, and James L. Spencer, as adverse parties were taken by the plaintiffs in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above styled and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 1:00 p.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action and pursuant to the following additional stipulation, to-wit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the defendants be taken before Mildred A. Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of said depositions, same shall be presented to me counsel

of record for each of the parties and thereafter to each of the defendants for reading and signature, which signature and verifications may be had before any notary public or other officer qualified to administer oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party

reserves the right to object to otherwise inadmissible matters elicited in the course of the depositions.

APPROVED:

Carl Rachlin /s/
Of Counsel for Plaintiffs

APPROVED:

Thos. H. Watkins /s/
Of Counsel for Defendants

J. L. RAY

having been first duly sworn, testified as follows:

BY MR. RACHLIN:

Q. Chief Ray, do you want to give us your full name?

A. John L. Ray.

Q. And your residence?

A. 222 Calhoun Street, Jackson, Mississippi.

Q. And would you tell us for the record how long you have been a member of the police force in Jackson, Mississippi?

A. In September, it will be 22 years.

Q. And your present rank?

A. Deputy Chief of Police.

Q. And when did you achieve that honor?

A. October 1st this past year.

Q. 1962?

A. Right.

Q. And up until that time, you have been Captain?

A. That's correct.

Q. And on September 13, 1961, you were Captain?

A. That's correct.

Q. What was your duty on September 13, 1961?

A. I was in charge of the patrol. The three - I worked with the three shifts that worked the twenty-four hour tour of duty.

Q. And you were in charge of all foot patrolmen, is that the idea?

A. Well, it is not foot; it's all patrolmen, cars and foot.

Q. And were you in charge of assigning men to the Continental Trailways?

A. I was.

Q. As well as the Greyhound?

A. I was.

Q. And I take it you have achieved some kind of national reputation of having made a lot of arrests under Section 2087.5, is that right?

A. I don't know what kind of reputation that is, but maybe so.

Q. How many people have you arrested under that section?

A. I don't know exactly, but approximately 315. Of course, we have been arresting people for breach of the peace ever since I have been on the police department.

Q. Now, Captain Ray, both officer -- Chief Ray, both Officer Griffith and Officer Nichols weren't able to describe the sign in front of the white waiting room to the Trailways bus station. I wonder if you can tell us what it said? Can you recall?

A. Yes, sir. It said "White waiting room only, by orders of the Police Department"; I believe that is the wording.

Q. I believe so too. It doesn't say that now though, does it?

A. No, sir.

Q. What does it say now?

A. "White waiting room" with an arrow pointing, and one just east of there pointing to the colored waiting room saying the same thing.

Q. So that on September 13, 1961, the sign said "White waiting room only, by order of the Police Department", or something like that, words to that effect?

A. That's correct.

Q. Yes. So that was the orders then to Officer Griffith and Officer Nichols, isn't that right? "By orders of the Police Department - white waiting room only."?

A. No, sir, not necessarily.

Q. That was not their orders?

A. No, sir.

Q. Well, what did the sign mean?

A. That sign is there for people to use. In other words, they have a choice. It isn't against the law to go in either waiting room.

Q. Well, don't you think if it says "By order of the Police Department", people might think they don't have a choice?

A. I believe that's what the Court ruled, and that's the reason it was changed, but it was just for a matter of choice.

Q. What was the choice if the sign read "By order of the Police Department"?

A. Well, people - In other words, people that chose to use that, they did, and it's very - It is normal, and usually people go by the signs.

Q. Well, don't you think though, in all seriousness, Captain Ray, that if the sign says "White waiting room only, by order of the Police Department", there isn't any element of choice to anybody walking by? In all seriousness, now.

A. Well, I'll say this. On numerous occasions, I have seen members of the opposite race in the one designated for the white waiting room in my 22 years on the police force.

Q. By the way, do you believe in segregation of the races?

A. Do I believe - Well, in other words, segregation of the races. I believe in separation of the races to a certain extent, but there is no way to have complete segregation or complete integration, I don't believe.

Q. Well, now, do you know that under the law of the State of Mississippi the bus companies are required to have separate facilities for Negro and white?

A. Do I know that under the law?

Q. Of the State of Mississippi.

A. I am not familiar with it, no, sir.

Q. Well, do you know that it is a misdemeanor under Section 2351 for any person violating the rules about separation of races in bus terminals?

A. I know at one time way back it was what they called a Jim Crow law. Of course, I don't know of anybody being arrested for that. I haven't arrested anyone for that. I am not familiar with the law you are talking about.

Q. You are not familiar with that law?

A. No, sir. You may read it to me, and I --

Q. I'm not going to read it to you, but isn't it your duty to uphold the law?

A. Uphold the law, right.

Q. And if an act is a misdemeanor, isn't it your duty to uphold the law; is that correct?

A. That is correct.

Q. And you are not familiar with Section 2351.5 --

A. I am not.

Q. -- which requires - which makes it a misdemeanor for anybody violating the law by entering the separate facilities in the bus station?

A. I am not familiar with it.

Q. Now, you are familiar with Section 2087.5?

A. That's right.

Q. When did you hear that the fifteen Episcopal ministers were going to be in Jackson, do you recall?

A. It was some publicity in the paper and some by radio. I believe that was on, probably two or three days before they arrived.

Q. Well, what was the publicity?

A. I don't remember just how it was, but in other words, it was kinda' that they were coming here as agitators, I would say, similar to the freedom rider movement.

Q. Well, what - Now you used the word "agitators". What was there about them that caused you to use the word "agitators"?

A. Well, when you have a peaceful situation with two races in harmony, you might say, peaceful, then a bunch of ministers come in and try to create confusion, I think that's agitative, isn't it?

Q. Well, you think the fact that they were both white and Negroes together was what made you think it would be agitative?

A. Well, no, I think that -- In other words, let me try to describe it this way. This summer I was in Washington. I had a matter of choice to do this or do that. If I had tried to change it, I am sure I would have caused confusion, but I didn't try to change it. If I didn't want to be there, I left.

Q. Well, what was the confusion that you understood they were causing in Jackson, or about to cause in Jackson?

A. Well, they hadn't caused any until this particular time.

Q. What was the confusion that you understood they caused?

A. Well, about 11:40 I arrived at the Trailways Bus terminal. Maybe I need to go back a little further and start.

Q. Go back as far as you want.

A. About 11:35 Chief Pierce told me that the information they had was that the Episcopal preachers were on the way to the Trailways bus terminal and for me to go down there immediately, and as I got in the car he hollered out the window and said, "They are already there" and to rush on down, so I immediately went to the Trailways bus terminal. I left the lot at the police station, I went down Tombigbee Street --

Q. How did you get down, by the way?

A. That's what I'm trying to tell you - by car.

Q. By car?

A. I left the police station and went down Tombigbee Street, which is the street parallel with the one that the police station faces. I went through a parking lot there, entered the gate to the lot of the Trailway bus terminal, which wouldn't have taken over two minutes at the most, and as I walked across this lot to the terminal, I was approached by a man, and he told me I had better hurry and get inside; there was about to be trouble. I entered the terminal --

Q. By the way, let me interrupt you for a second, Captain. Please don't think I am rude. Do you know who this man is?

A. I do not.

Q. And in fact, when I asked you that very question at the first trial, you said you didn't know?

A. That's correct. That's correct.

Q. And I think you also said at that time that he said nothing more than there was about to be trouble?

A. I just kept walking.

Q. You didn't know what the trouble was?

A. I didn't know what the trouble was, but I knew that the preachers had arrived there.

Q. Well, you didn't know that they were causing the trouble, did you?

A. I had been very familiar with the freedom riders and the trouble that they had caused, and I assumed it was similar. I didn't know.

Q. You assumed they were causing the trouble?

A. I didn't know what the trouble was. I entered the terminal --

Q. Did you assume they were causing the trouble?

A. Well, I didn't know. If he said it was trouble, I assumed it was similar. I didn't know.

Q. All right. Then what did you do?

A. As I entered the terminal --

Q. Which door did you enter, by the way?

A. I entered the rear door, I think it's the one.

Q. Closest to the east end of the building?

A. Well, the east end of the west waiting room.

Q. White waiting room?

A. In other words, the one usually used by the whites, correct. And as I stepped inside, I looked the situation over, and I saw that there was an unusual amount of people in there for that time of day, unless it was on a holiday, and I was very familiar with the crowd of people in those terminals, and I looked the situation over and I could see that the people were in a very dissatisfied, ugly mood, and as I noticed over there, there was a group of Episcopal ministers, so after sizing the crowd up and determining that there was some trouble there and all the focus point was on these ministers, I went to the ministers and wanted to remove the cause of the trouble, which was the ministers; so I approached them, and I ordered them to move on, and at that point, Reverend Morris told me, says, "We can't." I gave the order again, and he said, "We can't do that. All we want to do is catch our bus and get something to eat."

I said, "If you will follow me, I'll be happy to see you safely on your bus." He says, "We can't do that." I says, "Are you refusing to obey my order?" He indicated he was, so at that time I placed them under arrest. After they were placed under arrest, we went out the same door that I entered. We walked down - walked east on the platform to the south end of it, and the paddy wagon had been called; and as we walked out the door, I would say some twenty people followed us. I pointed this crowd out to these ministers, and I quoted a - Since they were ministers - I thought I knew one of the Beatitudes "Blessed are the peacemakers", and I says, "I don't believe that you are causing peace." And the crowd came on down, and when we got to the end of the ramp there waiting, Reverend Morris had a testament, and I believe he read some of Paul's writings about "Put on the whole armor" or something like that. By that time the wagon came up, while he was still reading.

Q. Had you sent for the wagon?

A. Oh, yes.

Q. When did you send for it?

A. When did I send for it?

Q. Yes.

A. I don't remember when I - I believe Officer Nichols told them he had arrested them, and they sent the wagon when he called. I'm not sure. I didn't call for it. But anyway, while he was still reading - They didn't respect it enough to wait 'till he got through. They began to crowd into the wagon. And I would have, even being a police officer.

Q. Now, when you went to the bus station, what was there to indicate that these people had caused trouble?

A. The crowd.

Q. Well, how did you know that they had caused the trouble?

A. How did I know? Well, the trouble was evident right there.

Q. What was evident about it?

A. The mood that the people were in and the focus point.

Q. Well, how did you know that they had done something wrong?

A. It was right there then. Their presence was such to cause a breach of the peace.

Q. You didn't see them do anything that was wrong, did you?

A. They were there that caused the people to be in the mood. As I mentioned --

Q. Well, how do you know --

BY MR. WATKINS: Let him finish.

BY MR. RACHLIN: Okay.

A. As I mentioned before, they - I believe it had been about a month - The freedom rider movement had died down, and the people were hopeful that this tense situation would not arise, and we wouldn't have trouble similar to what other cities had had, such as Montgomery and Anniston, and we had worked very hard to keep our city peaceful, and people just don't appreciate an agitative group coming in stirring up trouble, confusing the people again.

Q. Well now, when you saw them in the bus station,where were they - in the corner of the bus station?

A. They were over near the concession stand near the entrance to the cafeteria.

Q. Right. Now, were they doing or saying anything which was agitative, to use your word?

A. No. They were just there as a group of men of God who were supposed to be winning people to God instead of causing confusion. I think it's enough to make people --

Q. Well, how did you know that they were the ones that caused the crowd to be in a turmoil, as you say?

A. Well, I have been in the bus terminal many times --

Q. Didn't you just assume it?

A. No. I have been in crowds of people many times, and usually in a bus terminal unless there is something to cause people to be in the mood they were in, they were in a jovial or happy mood, bidding people goodbye. Once in awhile you'll see one sad to see a loved one leave or something like that. That wasn't the circumstances.

Q. Well, you didn't see them do anything or say anything which caused the crowd to be in an ugly mood, did you?

A. Them being there was a threat.

Q. Well, how did you know this?

A. Well, there was --

Q. Tell me how you knew their being there was a threat?

A. I was in the terminal, I looked the crowd over, I saw the focus point was the ministers, and I saw the moods of the people, so that's the only way I could know it.

Q. Well, why didn't you ask some of the people to leave?

A. Why didn't I ask the people to leave?

Q. Yes. Why didn't you ask them to leave?

A. When I was --

Q. How did you know that the people weren't acting --

A. Let me answer one question at a time.

BY MR. WATKINS: Let him answer.

BY MR. RACHLIN: Right.

A. What was your first question?

Q. How did you know that the - Why didn't you ask some of the people to leave?

A. I was determined with the cause of the trouble, which was these ministers, and I think that it had - In other words, if you move the cause of the trouble, everything would go back to normal.

Q. Did you ask them what they were doing in the station?

A. What the preachers were doing?

Q. Yes.

A. I was trying to get them out of there.

Q. Did you ask them why they were in the station?

A. I did not ask them. I was trying to get them out of the statim to get the situation back to normal. I was hoping they would obey me. Nobody likes to arrest preachers, and that's the reason I continued to ask them to move on and move out of there.

Q. Well now, didn't they tell you they were on their way some place?

A. No, sir.

Q. Well, didn't you offer to take them to their bus?

A. I offered to.

Q. Well, you knew they were going to take a bus then?

A. He said all he wanted to do was catch his bus and get something to eat, and I told him I would be happy to see them safely on their bus.

Q. Well then, you knew they had business being in the station, didn't you? They had the right to be there, didn't they?

A. Under normal circumstances, yes, but that wasn't normal circumstances.

Q. Well, could it have been that the crowd was in an ugly mood because the preachers were arrested?

A. Had I not tried to remove the cause, Mr. Rachlin, I would have been neglecting my duty, and I feel sure there would have been bloodshed had I not done my duty as I did it.

Q. Let's get back to the point where you came into the station. Now, you described how you saw the ministers over near the concession and near the door to the restaurant, didn't you?

A. That's correct.

Q. And they were not saying anything at that time, were they?

A. No, sir.

Q. And they weren't threatening anybody, were they?

A. Them being there had caused the threat.

Q. What was there about their standing where they were that was a threat?

A. As I have already described, they were an advertised group, and I have already told you that it had been almost a month since the freedom riders had been there and people were back peaceful kinda', and, of course, when this advertised group came out in the paper and through the radio, there was a tense situation again, and they thought it was another movement of freedom riders. We had worked real hard to prevent any violence, and we didn't want to start again.

Q. You also worked real hard to keep the white waiting room white only, isn't that true?

A. I wouldn't say that, no, sir.

Q. Now, were you the one who had given the instructions for Officer Nichols to go to the Continental Trailways station?

A. For Officer Nichols --

Q. You heard him describe --

A. Yes, I was the one.

Q. And he received that order as he described he did? You suggested it?

A. That's correct. He works under another captain, and I had contacted this captain and told him I wanted a man to go to the Trailways bus station, and I didn't particularly say Officer Nichols. That's the man he sent.

Q. And why did you do it?

A. Why did I do it?

Q. Yes.

A. You want me to go through the same thing? We were trying our best to prevent violence, and we knew that these Episcopal ministers were in town. We didn't know what move they were going to make or where they were going, but if they did come to this terminal, we certainly didn't want them to be hurt.

Q. Now, did you ask or did you station any officer on the sidewalk in front of the entrance to keep the entrance clear?

A. No. We didn't know where they were going.

Q. Did you know what entrance they were going to use?

A. We didn't know that they were coming to that particular terminal.

Q. You had heard about their coming to Jackson, and you assigned an extra policeman to that bus terminal, didn't you?

A. And the other one, and to the airport too, and I. C. terminal too.

Q. Yes. All right, did you give instructions to any officer or through any other captain or official to keep the sidewalks clear of crowds?

A. No, I didn't.

Q. Did you give instructions to anybody to keep people who didn't have proper business in the bus station out of the bus station?

A. No, I didn't. Had I known definitely where they were going, I think the situation would have been different.

Q. Now, you had made all the arrests of all the people who entered the Continental Trailways bus station under Section 2087.5, hadn't you?

A. No, sir.

Q. Who else had made some of the arrests?

A. Captain Hataway, Officer Bone. There have been several other officers.

Q. You made the great number of them though?

A. That's correct.

Q. How did it come about that you made them all?

A. How did it come about?

Q. That you made them all.

A. I am the supervisory officer, and as these ministers were involved in this one, we had received prior notice on the others too. Of course, we knew more in detail where they were going, and I'll say this, at times we've had as many as 75 police at one place to try to keep people from causing violence to anyone. We don't want bloodshed in our city, and we are a peaceful city. The two races get along fine, and we are doing our best to keep down any trouble.

Q. Did you know from the information you had that some of these clergymen were white and some were Negro?

A. I don't recall it that way, I sure don't.

Q. Well, then what made you think that they were agitators?

A. From the news media, and from the radio that they were coming here, and that they had been in New Orleans, and that they were gdng by Vicksburg, and that they were touring the south for purposes that - I didn't know exactly what they were doing, but I didn't feel it was what they were called to the ministry for.

Q. What did you think they were doing?

A. Well, I didn't know exactly, but my information that day was that they were going down there to cause trouble..

Q. Well, what trouble?

A. Similar to what would have happened had we not removed that cause.

Q. Well, what was the trouble they were going to cause?

A. Confusion.

Q. How?

A. Well, the only trouble I can describe that they could have caused was similar to what happened in Montgomery and Anniston, and I believe the most recent one was McComb.

Q. Well, now, you said a moment ago that you didn't know from the advance story that you had whether there were any Negroes in this group or not, isn't that right? Didn't you tell me that?

A. I don't recall, but possibly did know that; I don't know. But that didn't have anything to do with the arrests. If it had been all white and the circumstances had been the same, or if it had been all colored and the circumstances had been the same, or if it had been all attorneys and the circumstances the same, it still would have happened.

Q. It was just their presence in the station that caused the trouble?

A. That is correct.

Q. Nothing they said or did caused any trouble?

A. That's correct.

Q. Just their presence?

A. That's correct.

Q. And you think that under the law you have a right to arrest them if their presence is disturbing somebody else?

A. In other words, if they are congregated with others under such circumstances that a breach of the peace might have been occasioned thereby, and when they are ordered to move on or move out of there by a police officer and they refuse to obey him, they violate the law, Mr. Rachlin.

Q. Well, you know that Judge Moore disagrees with you, doesn't he?

A. I don't know that Judge Moore disagrees with me. I don't think so, not on that.

Q. Well, didn't he hold in this case that there wasn't sufficient evidence?

A. I don't know what his holding was, but my information was that you made some motion that it be dismissed on some technicality, and I don't know what his holding was. I don't think that he - I don't think that if he had heard all the evidence that you have heard today, I don't think he would have.

Q. Well, you were there, weren't you?

A. I was there.

Q. Did Mr. Travis call you to the witness stand?

A. He didn't that day.

Q. You didn't refuse to go on the witness stand, did you?

A. No.

Q. And as far as you know Officer Griffith didn't refuse to testify?

A. Let me say this. I was not in the Courtroom. I was there as a witness --

Q. In fact, you and I talked --

A. -- and they invoked the rule, and I was on the outside, and my understanding was that you made some motion and that they went along with your motion on some technicality. You know what that was; I don't.

Q. Well, you do know that Mr. Travis never called you as a witness, don't you?

A. I do know that.

Q. And do you know whether the motions I made were at the time when Mr. Travis had rested?

A. I don't know what the motion was. I just got through testifying to that.

Q. Did Mr. Travis tell you he wasn't going to call you as a witness? Didn't he go outside and tell you - go with you to the next Courtroom, and didn't he tell you he was not going to call you as a witness?

A. He told me a motion had been made and that he had - It was an acquittal in this case, and --

Q. What did he tell you?

BY MR. WATKINS: Let him finish.

BY MR. RACHLIN: I apologize.

A. And that as far as he knew he wouldn't need us any further. I believe - I don't know exactly what he said, but I think it was something similar to that. Of course, you know what happened inside, I don't.

Q. I understand that you weren't in the Courtroom. I remember that very distinctly, but did he say to you there had been an acquittal before he decided not to call you as a witness?

A. No, I wouldn't say he did. I wasn't in there; I don't know.

Q. You don't know what took place in the Courtroom, do you?

A. That's what I have testified to and what I've been trying to tell you for the last five minutes.

Q. You think, then, if you had testified, there might have been a different result, is that it?

A. I didn't say that.

Q. Well, you know Officer Nichols did testify, didn't he?

A. He did.

Q. And he was present during the entire time before and during the time you were there, isn't that right? In the bus station? I withdraw the question; it's very confusing.

When you arrived at the bus station, Officer Nichols was there, wasn't he?

A. He was.

Q. And he stayed all during the time you were there, didn't he?

A. He did.

Q. So he not only saw what happened and heard what happened when you were there, but he also knew what took place before you came, isn't that right?

A. That is correct.

Q. And he testified in Court, didn't he?

A. He did.

Q. So that he presumably described everything that took place, isn't that right?

A. I don't know whether he described everything that took place. We have four witnesses here, and none of them has described it exactly the same, of the four ministers.

Q. Now, had there been any discussions among the officials of the police department as to what to do when groups that you have described, called freedom riders, entered the bus station?

A. As to what to do?

Q. Yes.

A. I don't know whether they have had any meetings or not. I am sure they did, because it was unusual circumstances around the first time, and I am sure they did have some, but it is a standing order for police to preserve the peace and maintain law and order.

Q. Who is your supervisor?

A. Chief Rayfield, and --

Q. At that time?

A. Chief Rayfield and Chief Pierce. Chief Rayfield, Chief of Police, and Chief Pierce, Assistant Chief of Police and Chief of Detectives.

Q. Now, who is the official above them?

A. The Mayor and Commissioners.

Q. The Mayor and the Commissioners of the City?

A. That's correct.

Q. Now, were you in any meetings with the Mayor on this subject?

A. Yes, he told - You mean on this particular subject?

Q. Not on the ministers, but on the people who had been arrested in the bus station?

A. Yes.

Q. What was the subject of those meetings?

A. He wanted to know how we planned to maintain law and order and preserve the peace.

Q. And who spoke on behalf of the police force?

A. We told him - I don't remember who spoke, but we told him our plans about using every available man to keep people moving, and many people were ordered to move on and move out of there, and even at that, that still - even at that, it didn't work.

Q. Now, did you describe how you would ask the people to leave, and if they didn't, you would arrest them?

A. Would I describe --

Q. Did you describe to the Mayor, or did some other - Chief Pierce or one of the other officials of the police department, describe to the Mayor how you would ask the people to leave the station, and if they did not leave, you would arrest them?

A. No.

Q. What did you tell him you were going to do then?

A. We were just protecting the scene placing our men. In other words, he did not want any violence at all, and he wanted to know how we planned to handle it, which I think he had a right to know, being the Commissioner of Police, and we explained that to him; that we planned to use every available man and that we were going to keep crowds from congregating anywhere, and that's what we attempted to do.

Q. You were going to keep crowds from congregating anywhere?

A. In the area that they might cause trouble, because we were very familiar with what had happened in Montgomery. We were familiar with what had happened in Anniston, and we didn't want that to happen here.

Q. Was Judge Moore at any of these meetings?

A. Judge Moore?

Q. Yes.

A. No, sir.

Q. Was Judge Spencer at those meetings?

A. No.

Q. Now, on September 13th you didn't have any police on the sidewalk in front of the bus terminal, did you?

A. No.

Q. And you had two people inside the station?

A. That's correct.

Q. I take it then you didn't think the problem was too serious, did you?

A. We didn't know where they were going, Mr. Rachlin.

Q. How many men do you have on the police force under your command?

A. Under my command?

Q. Yes.

A. There is 41 to the shift, and we have three shifts, and, of course, then we have other men that are not under my command that's available. If I need them, they are available to my use, which are motorcycle men and other traffic men. In other words, 41 times 3 is --

Q. 123?

A. That's right.

Q. Are you able ever to call a man who is off the shift - duty for some occasion?

A. Yes, sir.

Q. You do it from time to time, don't you?

A. That's correct.

Q. If you thought there was a real emergency here, you could have called people who were off shift, couldn't you?

A. If we would have enough advance notices as to where they were going, we would have been better prepared.

Q. Well, you said you knew two days in advance that they were going to be in town?

A. Oh, yes. Well, we knew that they were supposed to come to Jackson, and we knew that they were in Tougaloo, which is out of the City, but that alone didn't create any trouble other than people being tense, as wondering what agitative move they might make.

Q. Well, what agitative move did you think they might make?

A. We didn't know.

Q. Do you mean you thought they might go to the bus station?

A. We didn't know where they might go, but that was the purpose of the extra man being there.

Q. In case they went to the bus station?

A. That is correct.

Q. In a mixed group?

A. Well, if they had went there and the circumstances were such that a breach of the peace might be occasioned, it was better to have two than one, where we had one before. We didn't have any extra men out that day because we didn't know whether they were even coming to Jackson or not, or what their move would be. Had we known they were going to this particular bus station at this particular time, we would have had people on the sidewalk, and we would have known everybody's business in the terminal.

Q. Now, when you came into the station, you didn't speak to any of the people in the station, did you?

A. No, sir.

Q. So you didn't know for certain what was bothering them, did you?

A. Yes, I did.

Q. How did you know?

A. Well, the focus point was the ministers over in that corner.

Q. How did you know that it wasn't the fact that the police had arrested them that was disturbing the people in the station?

A. Well, I was going by the mood and attitude that the people were in. They were very much dissatisfied with this group of ministers.

Q. What could you tell from the crowd that indicated that they were dissatisfied withthe ministers?

A. It was similar to 36 other groups that had entered terminals. In other words, it was almost the same.

Q. What was similar about it?

A. The moods of the people and their actions, and their moods were similar.

Q. And you say you didn't speak to any of the people in the crowd?

A. No, I didn't.

Q. Did you hear what they were saying?

A. No, I didn't.

Q. So then you --

A. Other than this particular one that approached me as I was coming across the street.

Q. And he said there was going to be trouble?

A. He said, "You better hurry and get in there, there's going to be trouble."

Q. He didn't tell you what the trouble was going to be, did he?

A. No, I didn't ask him.

Q. So you didn't know what - precisely what he had in mind then?

A. That's correct.

Q. You don't know then whether he said "There's trouble because the police have arrested ministers."? Do you know whether that was in his mind?

A. I don't know what he had in his mind other than he thought there was going to be trouble in there.

Q. And you didn't know for certain what was disturbing the people in the bus station?

A. After I entered, I knew.

Q. Well, how did you know?

A. Well, I've described that. You want me to go through it again?

Q. Yes, I want you to go through it again.

A. By the attitude and mood and the focus point in the terminal, which was to these ministers.

Q. Well, how did you know that the people weren't disturbed at the policemen arresting them?

A. Well, as I testified to a few minutes ago, this was the 37th group, and everything was similar as it had been in the other 36 groups, and it was very evident that the cause of the trouble was the ministers. It wasn't any doubt in my mind at all.

Q. What was the similarity between the ministers and the other groups that you refer to?

A. Well, the other times I had been there, prior to the entrance of these groups --

Q. Yes.

A. --everything was peaceful and normal, and when these groups would enter, the circumstances would immediately chage, as to the same way it was this day when I entered the terminal.

Q. But wasn't it true that on many of the occasions when you were there before and made arrests in the terminal, you were there at the time the people arrived in the bus station?

A. I just testified to that.

Q. But this time you weren't there when the people arrived at the bus station?

A. That is correct.

Q. So you couldn't be certain what was disturbing the crowd?

A. I have described it that the circumstances were the same as they were - as it was in about 30 or 35 other times that I had been in terminals.

Q. What circumstances were the same?

A. The crowds of people were in ugly, angry moods and had not the cause or root of the trouble been removed, there definitely would have been violence, in my opinion.

Q. You say the crowd was in an ugly mood. You didn't ask any of them why they were in an ugly mood, did you?

A. No. It was evident to me.

Q. Did you ask either Officer Griffith or Nichols whether anything special had happened that you ought to know about?

A. I didn't.

Q. You just assumed that they were the ones?

A. It was evident that that was it.

Q. Now, they didn't make any insulting or rude or obscene remarks, did they?

A. No.

Q. Or they didn't use any profane language, did they?

A. Not to me. I didn't hear any.

Q. Is there anything that you have known since that indicated they did at any time?

A. No.

Q. Now, did you believe that people -- I withdraw the question. Are the people of Jackson normally a peaceful group of people?

A. Very peaceful.

Q. Now, did you think that the people of Jackson would attack fifteen ministers?

A. I did.

Q. Why?

A. I have described it. I will do it again.

Q. Why would they attack them?

A. As I have described before, the City is a peaceful city. We have been peaceful, then a group of freedom riders came on us, and the city was in a very tense, and in very much turmoil. I heard people make remarks since this time that I have never heard them make before. I have heard them say, "Let us handle this group." and "If you'll give us an opportunity, we'll get rid of them, and they won't be back." I have heard them say that "All they need is baseball bats."; and as I stated before, this hadn't happened for some three weeks or maybe a month, they thought it was dying down, then we had another advertised, agitative group coming to Jackson, and they were very much upset.

Q. Now, I take it you didn't arrest anybody in the crowd?

A. I did not.

Q. Nor you didn't even ask any to leave the station?

A. I did not. I was concerned with the cause of the trouble, and I didn't bother that group.

Q. Now, you didn't know whether they would even come to that Continental Trailways bus station, did you?

A. I have testified to that; that's correct.

Q. And you have fairly good sources of information?

A. Fairly good sources --

Q. Of information.

A. Well, the information is usually passed on to me by the Assistant Chief of Police.

Q. And you didn't even know whether they would be at any place in Jackson that day, did you?

A. Not until I received information from him.

Q. So that if you didn't know it and the police department didn't know it, how did the crowd know this?

A. Well, it isn't very hard, when you see a group of fifteen people dressed as they are, to tell what they are, and the Petroleum Building is directly across the street, and I imagine thousands of people work there; and that's the only explanation I can give, Mr. Rachlin.

Q. The police didn't know, but the crowd did, is that the idea?

A. Didn't know what?

Q. The police didn't know they were going to be there, but the crowd knew they were going to be there?

A. The crowd didn't know where they were going until they drove up, I am sure. I don't know; I wasn't there when they drove up.

Q. Well, did the crowd, like you described, collect in the few moments it took to walk from the taxicab into the bus station?

A. That's - I don't testify to that. I wasn't there then. All I testified to was that it was an unusual amount of people in the terminal.

Q. Well, it doesn't take more than a few moments to walk from where the taxicab pulled up to the entrance of the station, does it?

A. That's right.

Q. And yet you say the crowd collected in that short moment of time?

A. Directly across the street is the Petroleum Building, which is about the same distance to walk.

Q. Then, it is your position that if a crowd is disturbed by the presence of one or more people in the bus station, then you must ask the few people, who may be disturbing the crowd, to leave the station, is that right?

A. It is the duty of the police officer to preserve the peace and determine the cause of the trouble and to remove the cause to prevent violence.

Q. And if a crowd doesn't like a few people inside the station, then you feel it is your duty to ask the few people, whom the crowd doesn't like, to leave, is that right?

A. If you can preserve the peace by removing the cause of the trouble, I say remove it, yes; to keep down bloodshed, yes.

Q. Even though those people themselves are not in any way violent or rowdy?

A. If they are the cause of the trouble and they are congregated under such circumstances which might lead to a breach of the peace, I think a police officer neglects his duty if he don't try to remove that cause, yes.

Q. Even though they have a right to be inside that station?

A. That's correct. If the circumstances are such that they were this day, I think that's the way it shold be handled.

Q. They did tell you they were interstate travelers, didn't they?

A. I don't recall him saying "interstate travelers." He told me that he wanted to catch his bus and get something to eat, and I told him at that point that if he would follow me, I would be happy to see him safely on his bus. I told them, I'll say. He was the spokesman for the group. He was the only one who said a word to me.

Q. Did you ask him what time his bus was leaving?

A. No, I didn't.

Q. Then, you couldn't have - You didn't know what time his bus was leaving?

A. Well, the information that we had was that they were going to attend a convention.

Q. Did you know what time that bus would leave the station?

A. Yes, I believe I knew that that bus arrived in here at 11:25 and was to leave out at 12:01.

Q. What bus was that?

A. I don't know what bus it is. It's the one that comes from New Orleans. It gets in here at 11:25 and leaves out at 12:01, and I assumed that the bus was there, and I told them I would be happy to see that they got on - safely on the bus. Whether the bus was there or not, I still would have seen them safely on the bus, and had they left, I would have seen them safely to where they wanted to go. I would have attempted to.

Q. So, even though a person may himself, or two or three persons themselves may be not doing or saying anything violent, you think it is your right to arrest them if they refuse to leave the station, if their presence disturbs other people?

A. In other words, if the circumstances developed that developed this day, yes, and to further help you there, I'll say this, that if they had been Kuklux Klansmen, we would have handled it the same way. We did handle it the same way at the Old Capitol; and if it had been a group of boys that said they were coming out to the park to cause trouble, we would handled it the same way. And that's the best I can answer you, Mr. Rachlin.

Q. Are you a member of the Citizens' Council?

A. I am not.

Q. Have you ever been?

A. I have been.

Q. When was the last time you were a member?

A. It has been several years, and they have spent more money trying to get me to enter again - I mean, it looks to me like they spend more money mailing out stuff than they would be to gain from what little I could give them.

Q. Do you agree with the principles of the Citizens' Council?

A. What are their principles?

Q. You tell me; you are a local man.

A. I don't know all their principles.

Q. Haven't you read about their statements in the papers?

A. I have read some of them.

Q. You say you have been on their mailing list, haven't you?

A. They've mailed - tried to get me to join, yes.

Q. For how long a period of time were you a member?

A. I paid the dues one time.

Q. Was that for one year?

A. I believe that's right - $5.00.

Q. When did you join?

A. I don't know exactly. Possibly four years ago.

Q. So you were just a member for one year beginning four years ago?

A. I paid that $5.00 to get them off my back, you might say.

Q. Did they ever send you any material in the mail while you were a member?

A. I don't remember. I imagine they did send me some, I don't know. If they did, I didn't read it.

Q. You joined just to get them off your back?

A. Well, possibly they did have something back then that I was in favor of or I wouldn't have given them the $5.00. I don't remember.

Q. Well, are you in favor of the Citizens' Council now?

A. Some - Possibly some of the things they do, and some of the things, I am not in favor of.

Q. Well, what are the Citizens' Council things that they do that you are in favor of?

A. Well, I think it is fine to try to go about working out relations between the races in a peaceful manner. I think that's one of their principles.

Q. To work out relations in a peaceful manner?

A. That is, and keep them as they are, yes, sir.

Q. You mean to segregate them or integrate them?

A. As I stated before, I don't think you can completely segregate people, and I don't think you can completely integrate them, I don't care what moves you go at.

Q. Do you know whether the Citizens' Council favors segregation of the races?

A. It does favor it.

Q. And do you know that there are many laws of the State of Mississippi that require segregation of the races?

A. I am not familiar with them.

Q. Don't you know that the violation of any one of them is a misdemeanor?

A. In my twenty years, I have never arrested anybody for one of the laws pertaining to that.

BY MR. RACHLIN: I have no further questions.

I have read my testimony on the foregoing pages, and the same is correct.

STATE OF MISSISSIPPI

COUNTY OF HINDS

J. L. Ray

Sworn to and subscribed before me, this _____ day of

____________________, 1963.

NOTARY PUBLIC

I, Mildred A. Baker, Notary Public in and for Hinds County, Mississippi, certify that to the best of my skill and ability, I reported in shorthand and on tape recorder all the questions asked and the answers made by the parties stated in the foregoing matter, and that the foregoing is a full, true and correct transcript of the testimony so taken pursuant to the stipulation heretofore set out.

This _____ day of March, 1963.

Mildred A. Baker

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

ROBERT L. PIERSON, ET AL, PLAINTIFFS

VS. CIVIL ACTION NO. 3315

J. L. RAY, ET AL, DEFENDANTS

APPEARANCES:

CARL RACHLIN, ESQ.
280 Broadway
New York, New York,
ATTORNEY FOR PLAINTIFFS

E. W. STENNETT, ESQ. and
THOS. H. WATKINS, ESQ.
Jackson, Mississippi
ATTORNEYS FOR DEFENDANTS

DEPOSITION OF ROBERT L. PIERSON
Jackson, Mississippi
February 15, 1963

BE IT REMEMBERED that the depositions of the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., as adverse parties were taken by the defendants in the above styled and numbered action in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, on oral interrogatories for purposes of discovery and for use as evidence in the above styled and numbered action pursuant to Rule 26 of the Federal Rules of Civil Procedure, commencing at 8:00 a.m. on Friday, February 15, 1963, pursuant to that certain notice of the taking of said depositions filed in said action on January 15, 1963, and pursuant to the following additional stipulation, to-wit:

It is hereby stipulated by and between the plaintiffs and the defendants, through their respective counsel of record, as follows:

1. That the deposition of each of the plaintiffs may be taken before Mildred A. Baker, Notary Public, who is competent and qualified to take and transcribe such depositions and who is a notary public in and for Hinds County, Mississippi, and no objection is or shall be made to the fact that she is the secretary of Thomas H. Watkins, one of the attorneys for the defendants.

2. That all formalities with respect to the noticing, taking, transcription, and certification of said depositions are hereby waived; that after the said Mildred A. Baker, Notary Public, has certified to the correctness of said depositions, same shall be presented to one counsel of record for each of the parties and thereafter to each of the

plaintiffs for reading and signature, which signature and verification may be had before any notary public or other officer qualified to administer oaths in any jurisdiction, and that same shall constitute sufficient compliance with the Federal Rules of Civil Procedure; that the originals of any and all exhibits which may be offered in evidence or identified in these depositions may be withdrawn upon substituting in lieu thereof true and correct copies thereof.

3. That the depositions thus taken may be used subject to and in accordance with the Federal Rules of Civil Procedure and that the right to make objections as to materiality, competency or relevancy is hereby reserved, but if such objections are here made, they shall not be exclusive of the right to make the same or other objections prior to or during the trial of said action, it being agreed that the only objections that need be here made are objections as to matters of form as to which corrections could be made if said objections were timely asserted.

4. Inasmuch as these depositions are taken for purposes of discovery pursuant to Rule 26(b), each party reserves the right to object to otherwise inadmissible matters elicited in the course of the depositions.

APPROVED:

Carl Rachlin /s/
Of Counsel for Plaintiffs

APPROVED:

Thos. H. Watkins /s/
Of Counsel for Defendants

ROBERT L. PIERSON

having been first duly sworn, testified as follows:

BY MR. WATKINS:

Q. Please state your full name?

A. Robert L. Pierson, spelled P-i-e-r-s-o-n.

Q. Your age?

A. 36.

Q. The extent of your education?

A. Secondary schools, college, B.S. degree, and a graduate of Seminary.

Q. Are you married, Reverend Pierson?

A. Yes.

Q. Please give your wife's maiden name?

A. Rockefeller.

Q. No, I mean her full name.

A. Ann Clark Rockefeller.

Q. Do you have children?

A. Yes.

Q. Please give me the number and the ages of your children?

A. Claire, aged 6; Joseph, aged 5; Mary Louise, aged 3½; Rachel, aged 2.

Q. Are you an Epispocal minister?

A. Yes.

Q. What churches have you served, Reverend?

A. I have served the Episcopal Church of two parishes as fulltime member of the staff, and - You want the names of those?

Q. Please.

A. St. Margaret's in the Bronx, and St. Paul's. Bronx, New York, both of those.

Q. What church were you serving on September 13, 1961?

A. The Episcopal Church generally. Not a parish.

Q. Please describe the nature of your general duties for the Episcopal Church on that date?

A. I am Vice Chairman of Christ the King Foundation and was at that time.serving in that capacity fulltime.

Q. I was under the impression that you had given up your duties with Christ the King Foundation at that time; is that incorrect?

A. No, actually I never have. I am still Vice Chairman of the Foundation. The Foundation had been - had gone through a period of financial difficulties, and as of May we had to let the staff go and let the building go and curtail our activities, but I had a great deal of work to finish out and depart connection with the building that we were in.

Q. Who was your immediate superior with the Foundation?

A. The Reverend Henry C. Johnson, Jr.

Q. And where does he live?

A. He lives in Urbana, Illinois.

Q. Do I understand that at the time of your arrest in Jackson, Mississippi, on September 13, 1961, you were a passenger in interstate commerce?

A. I was about to be.

Q. But you never did get into that status?

A. I had tickets. This is September 13th, you say?

Q. Yes, sir.

A. I had a ticket for Chattanooga.

Q. Do I understand that you were on your way to a church convention in Detroit, Michigan?

A. That's right.

Q. And I believe the purpose of your trip was stated in a mimeographed pamphlet which you or some of you had in your possession at the time, and I will ask you, if you can, to identify a copy of that pamphlet which explains the purpose of your trip?

(Witness looks at instrument.)

A. I would say this is a good statement of our position at the time.

Q. Do you know who prepared that?

A. No, I don't. I could find out. I recall having looked over a draft myself.

Q. It was prepared either by or for your group, wasn't it?

A. Yes.

Q. And you had it with you on the trip?

A. I don't believe we did. I think that came - Wait a minute --

BY MR. RACHLIN: If you don't know, don't guess.

A. I believe --

BY MR. WATKINS:

Q. I want to ask you if it is not true, Reverend Pierson, that that was handed by a member of your group to a member of the Jackson police department shortly after your arrest in Jackson?

A. That may be. We may have had it.

BY MR. RACHLIN: Don't guess. Don't speculate.

A. I don't remember.

BY MR. WATKINS: I would like to ask that this be marked for identification as Exhibit "A".

BY MR. RACHLIN: All right. Is that dated, Mr. Watkins?

BY MR. WATKINS: No, it isn't dated.

(Said instrument attached marked for identification.)

BY MR. RACHLIN: Mr. Watkins, I notice on this document several interlineations and numerical references. Were they there at the time this was given?

BY MR. WATKINS: No, sir, those pencil marks on there are my marks entirely.

BY MR. RACHLIN: Perhaps we ought to note that then for the record.

BY MR. WATKINS: That's perfectly all right. There are no interlineations. There are some underlinings.

BY MR. RACHLIN: I meant underlinings. I stand corrected on that.

BY MR. WATKINS:

Q. Reverend Pierson, I believe you did state, after reading defendants' Exhibit "A" for identification that to the best of your knowledge it did state accurately the purposes of your trip; is that correct?

A. Yes.

Q. I note that it states: "At the beginning of our journey we shall see segregation in the Body of Christ as found in some of the educational facilities we are to visit. We believe it to be a tragedy that Church schools and colleges ever should have been closed to some, and a tragedy of immense proportions that they have lagged behind the state in the removal of racial restrictions." That is the only reference to the type of segregation to which this instrument refers at the beginning of your trip. I want to ask you whether or not during your trip through Mississippi you did interest yourself in segregation in educational facilities and particularly in church schools and colleges?

A. Yes, we did.

Q. What schools and what colleges were involved?

A. In All Saints College in Vicksburg.

Q. And what did you do in connection with that school?

A. We had had correspondence with the rector of the school, and I prepared to - had made preparations through correspondence to pay him a visit and to, in other words, carry out the primary purpose of our pilgrimage to discuss this problem as a representative group of clergy from all parts of the church. We wanted to talk to men who were faced with this particular problem in their own bailiwick, so to speak, to see if we could arrive at closer mutual understanding of the problem, and that's what we did at All Saints College.

Q. Is All Saints an Episcopal school?

A. I am not sure.

Q. It is a private school as distinguished from a public school?

A. It is a private school, and the rector at that time was an Episcopal priest.

Q. Is it attended by members of both races, and I mean by that the Caucasian and the Negro race?

A. I do not believe so. I don't know.

Q. Was the fact that it was not attended by both races one of your objections or protests at that school?

A. I wouldn't put the visit in the nature of a protest. The attempt to seek mutual understanding I think would be a more accurate way of stating the purpose of our visit. Whether or not the school was segregated isn't the - There is still the problem, and the clergy in the schools in the south know the problem far better than we do and could explain and communicate with us on a person to person basis of things that we don't know, so that they — I think the school is segregated. I think it was segregated then. I don't recall whether we asked the headmaster or dean, or the rector, I guess he is called - I believe we did ask him if it was segregated, and he said "Yes", but we didn't know until we got there.

Q. You recognized that whether that school was operated as an integrated institution or as a segregated institution —

A. I am sorry.

Q. Strike that, and I'll begin over. You recognized, did you not, that whether that institution was operated as an integrated institution or a segregated institution, that there were problems involved which could best be decided by the parties actually operating the institution, didn't you?

A. Yes.

Q. Did you attempt to forceably change any of the rules, regulations or customs of that institution?

A. No.

BY MR. RACHLIN: Mr. Watkins, I haven't raised any objections, but I really think the last few questions have been quite irrelevant to this proceeding. I haven't noted any objections, but I am afraid I may have to if you are going to proceed along that line. I think the last question, for example, was argumentative rather than eliciting information.

BY MR. WATKINS: Mr. Rachlin, under our stipulation, you do not have to object, you may object later, or you may object here. I assure you that I would not ask these questions if I did not think they were relevant, and I assure you that your objection will not have any effect on whether I ask a question or not, but feel free to do so if you want to object.

Q. Now, did you visit any other church schools between New Orleans and Detroit?

A. We visited a school in Metairie, Louisiana.

Q. The name of it, please?

A. I am not sure. I will leave it for someone else to give that name. I think I know what it is, but I am not sure.

Q. Was it segregated or integrated?

A. I didn't see any Negroes there. We saw most of the student body at one time.

Q. You didn't find out whether it was segregated or integrated?

A. I believe we found out that that school was also segregated, but this was -- This knowledge, as far as I am concerned - I had never known the name of the school, had never known the school before I got there, and I simply knew that the group had had correspondence with the headmaster, and he had invited us or agreed to have us come and confer with him on the particular regional problems.

Q. Was that an Episcopal school?

A. I do not know.

Q. Was it a church school?

A. I don't know that either. In order to know that, I think you would have to know the charter and the make-up of the Board of Trustees.

Q. How did you happen to select that school to visit?

A. I don't know.

Q. Did you visit any other schools between New Orleans and Detroit on that trip?

A. We, of course, stayed at Tougaloo Southern Christian College near Jackson. That would constitute a visit. That was a stope overnight.

Q. That was not one of the schools operated or sponsored by your church, was it?

A. No.

Q. Now, in the Louisiana school that you visited, did you forceably attempt to change any of the customs, policies or practices in that school?

A. No, sir. By force I don't quite understand what you are —

Q. Did you attempt to do anything in that school which you were advised was contrary to the practices, customs, rules of the school?

A. I don't think so. There was an integrated group of visitors, but I don't think that was contrary to the rules.

Q. Did you attempt to force that school to integrate itself - its student body?

A. Its student body, no, no.

Q. Now, you've told me about all educational facilities and church schools you visited between New Orleans and Detroit, have you?

A. We went to — A group stopped at the University of the South in Sewanee.

Q. Were you with that group?

A. No, I wasn't.

Q. Well, I am limiting my questions to your group, or the group of which you were a member.

BY MR. RACHLIN: Well, that's what he was talking about, Mr. Watkins.

BY MR. WATKINS:

Q. I am naturally asking you about visits of groups of which you were personally present.

A. All right.

Q. Now, your message outlining the purposes of your trip then refers to the end of the pilgrimage, and it states: "At the end of the pilgrimage we shall consider the most subtle and difficult question of segregation both within the

Church and the community. At a suburb of Detroit we will confer with local clergy on the role of the churches in overcoming discriminatory housing practices." --

BY MR. RACHLIN: Excuse me, Mr. Watkins. You read incorrectly from the statement.

BY MR. WATKINS: I beg your pardon.

BY MR. RACHLIN: The word is "separation".

BY MR. WATKINS: I beg your pardon. Go back and change the word "segregation" to "separation".

Q. -- "Men are forced to live in separate areas and they go to separate churches. Our 'separate-but-equal' parish system, as it exists in the North as well as the South, is partly a result of the housing pattern, but also a contributor to it. Clerical appointments reflect the fact that we have made parish life an adjunct to racial separation in the community." Now, what did you do at the end of the pilgrimage in the vicinity of Detroit with reference to separate housing facilities for the races?

A. What did I individually do?

Q. Or any group of which you were a member and present?

A. The group of which I was a member. Oh, and present. I wasn't present when the visit to Dearborn, Michigan was made.

Q. Then, your answer is that you did nothing?

A. No, I did nothing.

Q. Now, did other members of the group do anything along that line that you know of personally?

A. Other members of the original 28, yes.

Q. What did they do?

A. They visited with clergy, and I think local leaders in Dearborn, Michigan.

Q. In an effort to do what?

A. To - Again, to try to understand their position and to, in some way, have mutual interchange of ideas.

Q. You are a resident, I believe, of the State of New York, are you not?

A. Yes, sir.

Q. A glance at the map indicates that Jackson, Mississippi, would not be on your way from New York City to Detroit, Michigan. That is correct, isn't it?

A. I would say so. I would say that it would be considerably out of the way.

Q. Considerably out of the way, isn't it?

A. However, I wasn't living in New York then.

Q. Where were you living?

A. In Evanston, Illinois.

Q. Well now, would Jackson, Mississippi, be on your way from Evanston, Illinois, to Detroit, Michigan?

A. No. The intention of the pilgrimage was not for each of us to make an individual pilgrimage from his home to the general convention city. It was rather for us to meet in a group and make a pilgrimage together as a group.

Q. How did you happen to select New Orleans, Louisiana, as the city in which you would meet as a group?

A. It is a Gulf city. We intended to go from the Gulf to the Great Lakes covering, in a geographical division, every state from the extreme southern border of the nation to the northern border of the nation.

Q. Was that your only reasnn for selecting New Orleans?

A. I would say that that seemed to be the most convenient way to cross the country. There are other ways, of course, to cross, but this is the most logical way to cross the country and end up in Detroit, Michigan.

Q. As I understand you, you are telling me you wanted to travel from the Gulf of Mexico to the Great Lakes and that was the only reason you selected New Orleans, is that right?

A. I didn't think I said that.

Q. Well, correct me then.

A. I said I thought it was the most logical way to go. The selection of New Orleans had been done before I came into the activities. However, it seemed logical to me, and I agreed to it.

Q. Who selected New Orleans?

A. I don't know.

Q. Did you meet the others in New Orleans by prearrangement?

A. Yes.

Q. Who made those arrangements?

A. The arrangements were sent to me by the Episcopal Society for Cultural and Racial Unity which sponsored the pilgrimage.

Q. Is that an official organization of the Episcopal Church?

A. No, sir, it is not.

Q. Where is it located?

A. Its headquarters and home office is in Atlanta, Georgia.

Q. And who manages its affairs?

A. They are managed by a Board of Directors and they have an Executive Secretary, --

Q. And who is that?

A. -- I believe is his title. Reverend John Morris.

Q. Is that one of the plaintiffs in this lawsuit?

A. Yes, sir, it is.

Q. And it was he, I assume, who made contact with the individual members of the group to advise them that New Orleans was the place to converge on and that a certain date and time would be the time to arrive, is that correct?

A. Yes.

Q. Now, do you have copies of your communications with Reverend Morris incident to the meeting in New Orleans and when it would be held and why it would be held, and so forth?

A. Do I have copies of the notice that came to me? I don't think so.

Q. Did you receive only one?

A. I don't remember.

Q. Do you have a copy of any communication between you and Reverend Morris?

A. In my files?

Q. Yes, sir.

A. Yes, I do.

Q. Do you have that with you?

A. Not with me, no.

Q. Then, you have with you no copy of any communication between you and Reverend Morris with reference to this trip?

A. I don't believe so.

Q. Well, I am sure that Mr. Rachlin would not know the answer to the question. I think you are the best man to answer the question.

BY MR. RACHLIN: If the answer is no, say "no". I don't know what the answer is. Do you?

A. I don't have anything, no. That's one of those things I don't know whether — If I pored through everything I've got, I might find something, but I don't think I do.

Q. How did you travel to New Orleans?

A. I believe I flew. I did fly down from Chicago.

Q. And when did you reach New Orleans?

A. September 10, 1961.

Q. Approximately what time of day?

A. I think I came in about eight o'clock.

Q. A. M. or P. M.?

A. P. M., about eight.

Q. Where did you stay in New Orleans?

A. We spent the eveing at the Dryades Street Y.M.C.A.

Q. I believe you were in New Orleans then the night of the 10th and the night of the 11th, is that correct?

A. Just one night.

Q. Where did you spend the night of the 11th?

A. Wait. I may have the dates wrong here.

Q. You may have moved your date of arrival up one day too early if you spent only one night in New Orleans?

A. The night of the 10th in New Orleans. I guess I'm a day off there.

Q. You started a day too early. I think you arrived in New Orleans on the 11th.

A. I guess we did.

Q. You spent that night there, and then you started your pilgrimage on the 12th, is that correct?

A. I guess so. It works out that way because the next night we — Well, you will come to that.

Q. Yes, sir. Did you attend any meetings in New Orleans?

A. We had a meeting in the Dryades Street Y.M.C.A.

Q. Attended by whom?

A. By the members of the prayer pilgrimage group.

Q. And you said, I believe, there were 28 of those?

A. 28.

Q. Who was the leader of the group?

A. I would - Father Morris. The Revërend John Morris.

Q. Now, at your meeting there, was anybody in attendance other than the members of the pilgrimage?

A. Yes, there were people there who - some of whom, I believe were not members of the pilgrimage. There were about 35 people in the room, and, of course, none of us knew anybody in particular. We didn't all know everybody, so I couldn't know who was a member of the pilgrimage and who wasn't.

Q. You did not know all the members of the pilgrimage?

A. No.

Q. Did you know or ascertain the identity of any persons there who were not members of the pilgrimage?

A. I learned only, I believe only one man's name --

Q. Who was that?

A. -- who I discovered later was not a member of the pilgrimage.

Q. Who was that?

A. The Reverend Wyatt T. Walker.

Q. He is a minister?

A. I think he is.

Q. He is an Episcopal minister?

7 A. No.

Q. And he is the only person whose identity you learned that you knew was not a member of the pilgrimage?

A. I believe so. I don't recall anybody else.

Q. Well, now, isn't it a fact, Reverend, that Martin Luther King addressed the meeting?

BY MR. RACHLIN: I am going to object to the form of that question.

BY MR. WATKINS:

Q. That is not a fact? Why do you look at the others?

A. As far as I know, he was not there.

Q. He was not there?

A. I don't think so. I would have — I didn't know Martin Luther King, but I have met him since then, and I think I would have recognized him if he had been there.

Q. And he did not address the meeting or any meeting you attended in New Orleans?

A. I don't believe so.

Q. Did you receive any type of instructions at any meeting in New Orleans?

A. Instructions?

Q. Yes.

BY MR. RACHLIN: Do you want an explanation of the question?

A. Yes. By instructions, I don't know what you mean.

BY MR. WATKINS:

Q. By instructions, I mean were you instructed as to how you were to conduct yourselves during any phase of your pilgrimage?

A. I would say that we were advised to observe the - I would say, yes, we - Well, let me put it - I would say we received advice rather than instructions.

Q. All right, what was the nature of that advice?

A. To conduct ourselves in a gentlemanly and in a manner which would not bring discredit to ourselves. In other words, I think what was suggested was that we try to - From what I got out of the discussions we had, was that we should simply conduct ourselves in a polite and inoffensive way at all times.

Q. Who gave that advice?

A. Mr. Walker is the only one that I remember.

Q. Was it necessary for a group of Episcopal ministers to be advised to conduct themselves in a gentlemanly manner?

BY MR. RACHLIN: I won't permit him to answer that question, Mr. Watkins. That's an argumentative question. I'm not going to let him answer it.

BY MR. WATKINS: You refuse to let him answer that question?

BY MR. RACHLIN: I refuse to let him answer that question.

BY MR. WATKINS:

Q. And have you told me all of the advice and instructions that you were given?

A. All that I recall.

Q. Isn't it a fact, Reverend Pierson, that you were instructed specifically as to how to act as a freedom rider if you encountered violence more specifically in Jackson, Mississippi?

A. I don't recall Jackson, Mississippi as being necessarily singled out, as the only place mentioned.

Q. Was the rest of my question correct?

BY MR. RACHLIN: Will you read the question again?

BY MR. WATKINS: Let's read the question back.

(Question read)

BY MR. RACHLIN: There is specifically twice there. Specifically if he encountered violence --

BY MR. WATKINS: Let me rephrase the question for you, and I think I can make it easier.

Q. Were you instructed, first, as to how to resist violence if you encountered it as a freedom rider?

A. Well, I don't think the use of the term "freedom rider" was used in connection with us.

Q. Were you instructed as to how to handle violence if you encountered it?

A. Yes, we were.

Q. Did you anticipate violence?

A. That is a difficult question to answer, because —

BY MR. RACHLIN: When you say "you", do you mean him as a group or him as an individual, Mr. Watkins? The use of the word "you" is misleading.

BY MR. WATKINS: I mean it in either or both respects.

A. Either or both. I can't speak for the group of 28.

Q. Please speak for yourself.

A. The question was, did I anticipate violence?

Q. Yes.

A. I would say in all honesty that I saw the possibility of violence, but I wouldn't constitute that - I wouldn't consider that anticipating violence.

Q. The person giving you the advice was purporting to prepare you for violence, was he not?

A. No, I don't think so.

Q. What was the purpose of the advice?

A. He was preparing us for the possibility of violence.

Q. What was there about your trip that, in your opinion, rendered violence even possible?

A. There had been a number of newspaper accounts relating incidences in the south where there had been violence, and we assumed that the risk would be there.

Q. Those involved the freedom riders, didn't they, Reverend? Those newspaper accounts you are talking about.

A. Well, not all were freedom riders, of course. I think a freedom ride was a movement, but it was separate from a number of other incidences of violence, so that all the violence certainly wasn't on the part of the freedom riders.

Q. Did you consider yourself a freedom rider on this trip into Mississippi?

A. No.

Q. Do you have any copies of any speeches that were made at your meeting in New Orleans?

A. No, sir, I don't.

Q. Were you given any written instructions in New Orleans?

A. No.

Q. When and at what point were you first shown a copy of what's been marked for identification as defendants' Exhibit "A"?

A. Well, that's what I couldn't recall, and I think if I can wait and have others who will testify after me give accurate dates on when those were passed out, they can do it far better than I; if that's all right with you.

Q. That's all right, sir. When did you leave New Orleans?

A. That would be the morning of September 12th.

Q. At approximately what time?

A. Oh, it was between nine and ten, I believe.

Q. By what form of transportation?

A. By bus.

Q. Was that a regular scheduled bus, or was it a chartered bus?

A. It was chartered.

Q. What was your destination?

A. Detroit.

Q. On that bus?

A. Not on that bus, no. We had chartered a bus on the assumption that there would be 37 pilgrims, and at the rates, the way it worked out, I understand — others can correct me on this too — the rate for chartering a bus for 37 is cheaper than if you go by single fare; pay separate fares.

Q. To what point did you charter that particular bus? From New Orleans to what point?

A. It - As I recall, it had been chartered to a city beyond Jackson, but I can't remember what that city was to be, and it was changed then when we found that we only had 28 going. It was changed to simply cover the two institutions, which could not be covered by the regular bus lines. That is, to go to what I believe is St. Thomas Parish school in Metairie; although that name may not be accurate. The other visit was to be All Saints Junior College in Vicksburg, and we wouldn't have been able to take public transportation. It would have been very unwieldy to do that, and we chartered the bus to cover those two areas. The next stops we wanted to make - had planned to make beyond - schools beyond Vicksburg - were to have been in Alabama and Tennessee, and we could take public transportation from there to those places because they were both in large cities, and as I said only 28 priests then --

Q. Did you make any stops on your trip between New Orleans and Jackson, Mississippi, other than Metairie, Louisiana, and Vicksburg, Mississippi?

A. We made a couple of stops for - The bus driver stopped several times for things. We stopped once for noonday prayers in McComb, Mississippi. The bus driver had to stop for something there too.

Q. And at what church was that?

A. I don't recall. It was an Episcopal Church. There may be more than one in McComb.

Q. Did you or anyone connected with your group advise Bishop Duncan Gray in advance of your trip to Mississippi?

A. Yes, we did.

Q. Who did, and when?

A. I believe that ESCRU - Can I wait? I am not sure about that.

Q. You didn't do it?

A. I didn't do it.

BY MR. RACHLIN: If you don't know, say so.

A. I don't know.

BY MR. WATKINS:

Q. Did anyone in your group advise in advance Bishop Coadjutor John M. Allen of your trip to Mississippi?

A. I would say yes, from discussions with him. He was, at that time, rector of All Saints College. The discussions that I recall with him indicated he had known of our desires to visit his school.

Q. Did you visit his school?

A. Yes.

Q. Did you tell him of your plans that you had for Jackson the following day?

A. We didn't have a specific plan for anything beyond All Saints College. We knew we were going to spend the night at Tougaloo, but we didn't say anything about plans because we didn't know what they were.

Q. Then, you are telling me you had no specific plans for Jackson?

A. No.

Q. Who had made the arrangements for your stop at Tougaloo College the night of the 12th?

A. I believe Mr. Morris made those too. I am not sure.

Q. In advance?

A. They were made in advance, yes.

Q. Were you familiar with the fact that the news media in this vicinity, including radio and newspapers, were carrying the story at the time of your arrival in Jackson and prior to your arrival in Jackson that you and your group were coming here as freedom riders?

A. No, I couldn't say that I knew that. I heard a radio broadcast when we were here saying that we were in town, but I don't recall that they linked us as freedom riders. I think - I don't know what they called us.

Q. What was the occasion for them talking about your group on the radio?

BY MR. RACHLIN: I object to that. That would require a statement of somebody else.

BY MR. WATKINS:

Q. What did they say about your group on the radio?

A. The report I heard just said that 28 clergy were in town. I didn't know why they brought it up either.

Q. Then, you are telling me that nothing was said that you heard on the radio that indicated to you the reason for their publicizing your presence?

A. I don't recall. It was a brief item on a five minute news summary, is all it was.

Q. You listened to that at Tougaloo, didn't you?

A. I heard it at Tougaloo, yes.

Q. Didn't what you heard over the radio at that time make you apprehensive before you started your trip into Jackson?

A. Well, I don't know that I - I would say that that was a contributory factor, if that's what you mean.

Q. Was there anything said on the broadcast that you listened to which made you apprehensive?

A. Well, perhaps the fact that our passing through Jackson had elicited enough interest in the local papers and radio stations to break into print and broadcast time made me a little apprehensive about the fact that there may be people in Jackson who would rather we weren't here.

Q. You strongly suspected that, didn't you, Reverend?

A. Well, I don't think I would put it that way. Again, it is this business of the statement of anticipating or recognizing the possibility of or strongly suspecting. But I don't know what shade of —

Q. Use any phrase you like to explain it.

A. Well, I would recognize the possibility. I think in all cases we have to be prepared to recognize such possibilities as this.

Q. Why did you and your group stay at Tougaloo College?

A. Why did we stay at Tougaloo? Well, because the arrangements - Again, these arrangements had been made by the sponsoring organization, and it had just been left up to them, and I agreed to it.

Q. Do you know why Tougaloo was selected?

A. No, I don't.

Q. Did you have any meetings while you were at Tougaloo?

A. Yes, we had a gathering the evening we got there.

Q. At approximately what time?

A. Oh, I don't remember what time. It was kind of a reception up in the President's home.

Q. You met the President, I am sure, if you met in his home?

A. Yes, we had coffee.

Q. Did you meet any other people who were not members of your group there?

A. We met several of the faculty.

Q. Can you name them?

A. No, sir, I can't do that.

Q. Did you meet John R. Salter?

A. John R. Salter. That sounds familiar. Could you tell me what his -- Is he on thestaff of the university there?

Q. He is on the staff of the school; a teacher at the school, and it is my understanding --

A. John R. Salter. I could be - I am not terribly good on names.

Q. You don't remember?

A. I couldn't be sure of having met him.

Q. Did you, at that meeting, discuss your plans for the next day in Jackson?

BY MR. RACHLIN: He did not describe this as a meeting, Mr. Watkins.

BY MR. WATKINS:

Q. Well, did you, at that social gathering, discuss your plans for the next day in Jackson?

A. Well, we discussed our plans for the pilgrimage in general because there were several people who had to go different ways because of previous commitments which I hadn't known about, and I don't think this was generally known at the beginning that we would -- that certain people had to be at convention ahead of time to make arrangements for things they had to do, and we decided at that point it would be wise for us to, some go right on to Detroit and others stop at some other places, the places we had in mind; Sewanee, for instance.

Q, Was there any discussion at that social gathering that night about your having come to Jackson as freedom riders?

A. I don't think so.

Q. It wasn't mentioned?

A. By people of the college, you mean?

Q. By anybody in the group in your hearing. Was the fact that you all had come to Jackson as freedom riders discussed that night?

A. You mean by using the term "freedom riders"? I don't recall that; they may have.

Q. Have you ever used that term in connection with this trip?

A. I frequently say that we were not engaged in a freedom ride.

Q. As a matter of fact, Reverend Pierson, when you filed a written application with ESCRU in Atlanta to make this trip, and were accepted, didn't you advise your wife that you had been accepted for a freedom ride?

A. No, I didn't.

Q. You didn't?

A. No.

Q. Going back for just a moment to New Orleans, you mentioned Reverend Wyatt Walker. What was his connection with Southern Christian Leadership Conference, if you know?

A. I didn't know then because I didn't know him.

Q. Well, what do you know about it now?

A. I think he is an Assistant Director. I don't know exactly the title, but I know he had some administrative capacity.

Q. He told you at that meeting in New Orleans that night that he had been a freedom rider himself to Jackson, didn't he?

A. You know, I simply can't remember. I had a - He said that he had been a freedom rider, but for some reason I thought of him as having been in Tallahassee, but

I may be wrong about that. I didn't know him, and I am not terribly familiar with the south on anything anyway, which is one of the reasons I wanted to undertake this pilgrimage.

Q. Wasn't there a man at that meeting in New Orleans by the name of James McCain?

A. I don't recall.

Q. You don't recall his giving instructions as the instructor of the New Orleans workshop for freedom riders operated by CORE?

A. No, sir, I don't recall that.

Q. Was a man by the name of Tom Gaither present at that meeting?

A. I don't recall whether he was present either.

Q. You don't recall his being present and identifying himself as Field Secretary for CORE in Jackson, Mississippi?

A. No, I don't recall that. I have met him since then too, and I think I might - Like King, I thought I would have recognized him if he had been at that meeting. He may have been there and I didn't know.

Q. And you are positive that neither he nor King spoke to that meeting?

BY MR. RACHLIN: Meaning he, who are you referring to, Mr. Watkins?

BY MR. WATKINS: Gaither.

A. Gaither? No I can't be positive that neither he nor King spoke because I couldn't even swear whether they were there or not.

Q. Well, I mean, if they had gotten up and given a talk to the group, you would have remembered them, wouldn't you?

A. I think I would have remembered King if he had gotten up and spoken to the group, and, therefore, I don't think he did.

Q. Did anyone speak to the group other than Reverend Wyatt Walker?

A. I believe two or three did speak to the group besides Wyatt Walker?

Q. And what was the nature of those talks?

A. They were, I would say, similar to the advice and suggestions that Wyatt Walker was giving us.

Q. Didn't they give you demonstratins as to what to do, for instance, if a person came at you with a chair to hit you with a chair?

A. Yes, that was one of them.

Q. You have seen these television workshops of CORE on television where the bus driver would kick a passenger, or a policeman would knock him down and drag him through the bus. Was it that kind of workshop they were putting on?

A. I have never seen that.

Q. Was there anything similar to that at the meeting there in New Orleans?

A. Yes. I don't know whether it is similar - I can't say it is similar to what I haven't seen, but I don't think throwing a chair was brought in specifically.

Q. Well, you describe for me the scenes they did display there at the workshop?

A. Was that a workshop?

Q. Let's don't quibble over the word. Describe the scenes of examples they gave you at your meeting in New Orleans of what might happen to you?

A. I think one of the things that - As I recall, it was more, I think, what happens if you - if someone comes from behind you and takes you by surprise, what is apt to - The first reaction is what they were getting at.

Q. Is that the only thing they gave you an example of?

A. I don't think they threw any chairs.

Q. Did they knock anybody down?

A. I don't think so.

Q. Did they strike anybody?

A. I don't remember. I think maybe - It's funny; the only thing I can recall about that was somebody pushed somebody off a chair. That's the only thing I can remember.

Q. Did they kick or drag them?

A. I don't recall that.

Q. And you were instructed as to what to do if that occurred to you; is that the idea?

A. Well, it was suggested to us. I wouldn't say that we were instructed, because there was no one really telling us what to do.

Q. Reverend Pierson, you knew that violence had resulted from visits by groups such as yours in Alabama, didn't you?

A. Violence had resulted from a group such as ours? I don't think there had been a group such as ours.

Q. Well, you knew of violence that had occurred from visits of the freedom riders to Alabama, didn't you?

A. To Alabama, yes.

Q. You knew that hundreds of freedom riders had visited Jackson before your group got here, didn't you?

A. I knew that there had been a number of freedom rides, but I never did have the exact number.

Q. Well, what was your understanding of the purpose of those freedom riders?

BY MR. RACHLIN: I am going to not permit him to answer that question. It is way out in left field. I think almost all your questions have been way out in left field, but for the sake of brevity, I have let them go on, but this continus any further, Mr. Watkins, I am going to ask him to stop and go before Judge Cox. You really have been going so far afield that I cannot permit this any longer. I would suggest that if we are going to continue that kind of questioning about what other people were doing and so forth, then we had better go see Judge Cox.

BY MR. WATKINS: Then, you will not let him state whether he knows the purpose of the freedom riders?

BY MR. RACHLIN: That's right. I don't know whether he knows or he doesn't know, but it has nothing to do with this proceeding.

BY MR. WATKINS:

Q. Do you know whether there was any similarity between the purpose of your trip and the purpose of the freedom riders?

A. Well, --

BY MR. RACHLIN: I think he's answered that question several times.

A. -- in line with what my letter said, this occurred to me earlier. You introduced the term "freedom riders", and I am not sure whether I could accurately define what a freedom ride is, and I think the possibility of variation in definitions of the term makes it difficult for me to - It puts me in a bad spot if I try to explain what I think a freedom ride is, and I would just as soon not use the term.

BY MR. WATKINS:

Q. You are familiar with the groups who referred to themselves as freedom riders, aren't you?

A. Yes, sir, I am.

Q. You openly endorsed the purposes and activities of those groups, didn't you?

BY MR. RACHLIN: I object, and I instruct him not to answer the question.

BY MR. WATKINS:

Q. You and your group felt so strongly on that subject that you thought those activities should be carried out even though violence did occur, didn't you?

BY MR. RACHLIN: I make the same objectim, and I instruct him not to answer the question.

BY MR. WATKINS:

Q. And I believe you have already told me that you did recognize the possibility of violence resulting from your trip to Jackson, didn't you?

BY MR. RACHLIN: He didn't say on his trip to Jackson, I don't recall. He said it was a possibility on the trip. You used the word "Jackson".

BY MR. WATKINS: Mr. Rachlin, if you are going to testify, I would prefer to have you under oath. The witness ought to answer my questions. And I am putting you on notice that your conduct at this hearing is going to be raised before Judge Cox, and I would like to find out right now, are you a member of the bar of the District Court of the United States for the Southern District of Mississippi, Jackson Division?

BY MR. RACHLIN: No, but I have signed the register pursuant to Judge Cox's advice.

BY MR. WATKINS: And you have no member of that bar present with you in this hearing?

BY MR. RACHLIN: I do not have any member of the bar, but I am associated with an attorney is is a member of the bar.

BY MR. WATKINS: Who is that?

BY MR. RACHLIN: I was previously advised that that would be satisfactory.

BY MR. WATKINS: Who is that?

BY MR. RACHLIN: Mr.Higgs. He is counsel of record in this case as you know, Mr. Watkins.

BY MR. WATKINS: But he is not present, and he is not condoning your conduct of interrupting the witness and refusing to permit him to answer these questions.

BY MR. RACHLIN: No, he is not. It is not my purpose to interrupt, I assure you, Mr. Watkins. I've let you ask many, many questions, but I am not aware that depositions such as this can explore all things completely unrelated to the matters of the present case.

BY MR. WATKINS: The Court will determine the materiality of my questions.

BY MR. RACHLIN: We have discussed that before.

BY MR. WATKINS:

Q. Did you recognize the possibility of violence resulting from your trip to Jackson?

A., Not specifically, no.

Q. Did you generally?

A. I mean not in a specific area; with specific reference to Jackson.

Q. But as to the trip in general you did?

A. As to the trip in general, yes.

Q. Weren't your instructions in New Orleans discussed in terms of what might happen to you specifically in Jackson, Mississippi?

A. Not specifically Jackson, Mississippi.

Q. Jackson, Mississippi was not mentioned in the discussions, talks that were made in your meeting in New Orleans?

A. Yes, Jackson, Mississippi was mentioned.

Q. And what was said thereafter was intended to apply to your trip to Jackson, wasn't it?

A. There were other cities mentioned.

Q. Besides Jackson?

A. Yes.

Q. But it applied to Jackson and the other cities?

A. Yes, Jackson and the other cities.

Q. Then, you were personally instructed as to what to do if you encountered violence in Jackson, Mississippi, and other cities?

A. Well, if that's the way you phrase the question, I would have to answer yes to it, I guess, to the complete question.

Q. As a matter of fact, Reverend Pierson, didn't one of your group tell the Mayor of Jackson that he felt your cause was justified even though bloodshed resulted?

A. I don't recall that.

Q. Not to your knowledge?

A. Not to my knowledge.

Q. You recognized the possibility that your presence in Jackson would be regretted by some, didn't you?

A. Yes, possibly.

Q. You knew that your activities in Jackson would be strongly resented by some, didn't you?

A. Well, you can't know a thing. You can't have certain knowledge of a thing when there is the hope. I would say that I had the hope that my presence in Jackson would not be resented by anyone, and with that hope there can't be certain knowledge that it will be resented. The possibility was there.

Q. Did you meet with any members of the clergy in Jackson other than members of your group, of course, who came?

A. Jackson clergy, no, we didn't meet any.

Q. You didn't confer with --

A. On what date?

Q. On your trip here September 12th and 13, 1961.

A. I don't believe - We didn't meet any Jackson clergy.

Q. You didn't call on any of the Episcopal ministers or bishops here in Jackson?

A. In Jackson, no.

Q. You knew that many groups who called themselves freedom riders had been arrested in Jackson, didn't you?

A. Yes. I think you asked that and I said that I did know that there had been.

Q. You came to Jackson as a group to act in such a manner as to recognize the possibility that you would be arrested, didn't you?

A. Came as a group to act in order to act in such a manner?

Q. No. You came to Jackson as a group to act in such a manner to recognize the possibility that you would be arrested?

A. To act in such a manner as to recognize the possibility. I don't understand that question.

Q. Did you anticipate that you might be arrested when you came to Jackson?

A. Did we anticipate that we might be arrested when we came to Jackson? Well, I think I would have to answer that we anticipated -- That's a very difficult question to answer because the whole reasoning behind the arrest as I see it is involved, and --

Q. Reverend Pierson, it is really a rather simple question. Did you anticipate being arrested when you came to Jackson?

A. It is so fraught with things, I consider it an extremely complicated question.

Q. I think you could answer it with a simple yes or no.

A. Well, I would say that I did anticipate the possibility of arrest in Jackson.

Q. As a matter of fact, Reverend Pierson, you had discussed that possibility with Mrs. Pierson before you ever left home on this trip, hadn't you?

A. Yes, but I might add that my - the general thought of the statements I made to her was that I didn't think there was much likelihood of this. So when you asked me if I anticipated, anticipation is, I consider, a loaded word. Recognizing the possibility of, I would accept, but I can't - I have already answered that I anticipated, but I say that I don't know exactly what you mean by anticipating. When you anticipate the arrival of a friend back from a voyage, it's looking forward to it, and I certainly didn't look forward to any such thing as this.

Q. Do you believe in abolition of the whole system of racial discrimination and full racial equality?

A. Yes.

Q. Do you believe in abolition of all laws which result in segregation of Negroes?

A. "Abolition" is a word which I haven't used since reading about the Civil War in history books —

Q. You know what the word means?

A. — and I ask for a fuller definition of the word.

Q. Well, I think it means "doing away with, setting aside."

A. All right. Well —

Q. Do you believe in abolition of all laws which result in segregation of Negroes?

A. Yes.

Q. Do you believe in abolition of all laws prohibiting intermarriage of persons of a different race?

A. Yes, if such laws exist, I think —

Q. Do you believe in full and equal admittance of Negroes to all railway station waiting rooms, restaurants, hotels, and theatres?

A. I don't know whether you are asking me a question - whether I am answering the question that you are asking or not. I believe in equal right to these facilities. I wouldn't want a drunken violent Negro in the same waiting room with me any more than I would want a drunken violent white man.

Q. That wasn't the question, Reverend. The question was simply, do you believe in full and equal admittance of

Negroes to railway station waiting rooms, restaurants, hotels or theatres?

A. Well, could I change it still to full and equal admittance of all persons without regard to color?

Q. State it any way you like. Do you recognize that each of the statements that I have asked you whether you believed in were taken from the Communist Party position of 1928, as published in the May 26, 1928 issue of the Daily Worker on page 6?

A. I didn't know that.

Q. You did not know that?

A. I am glad I didn't answer them all.

Q. Let me hand you a copy of that statement taken from the May 26, 1928 issue of the Daily Worker, and I will ask you if you don't find all of those incorporated in that position of the Party at that time?

(Witness looks at instrument)

A. Yes, that may be - The term"abolition" is kind of adated term. That's why I couldn't figure out why you were using that.

BY MR. WATKINS: I would like for that to be marked as Exhibit "B" for identification.

(Said instrument attached marked Exhibit "B" for identification.)

BY MR. RACHLIN: May I see that, please?

BY MR. WATKINS: Yes, sir.

BY MR. RACHLIN: There are only a couple of pencil notations on there.

BY MR. WATKINS: Those pencil notations are mine.

BY MR. RACHLIN: May we note that for the record?

BY MR. WAKINS: Yes, sir.

BY MR. RACHLIN: May I ask you this? I take it you did not read from this entire document, is that correct, Mr. Watkins?

BY MR. WATKINS: I did not read everything that was on it. It will speak for itself.

BY MR. RACHLIN: Yes. One other note for the record. Well, it is only admitted for identification. I am going to object at the appropriate time to the admission of the document as being irrelevant and prejudicial.

BY MR. WATKINS:

Q. Do you recognize, Reverend Pierson, that that position was taken by the Communist Party in 1928, not for the purpose of helping the Negro, but for the purpose of creating strife between the white and Negro races, particularly in the southern part of the United States?

A. I don't recognise that, no. I don't know anything about the tactics of the Communist Party when I was two years old.

Q. Do you know anything about the tactics of the Communist Party today?

A. I don't really think that I know any people who are members of the Communist Party in this country.

Q. Exhibit "B" for identification contains this statement: "The Negro race must understand that capitalism means racial oppression and Communism means social and racial equality." Do you agree with that statement?

BY MR. RACHLIN: Do you want to look at the statement again to refresh your memory?

A. Well, I noticed that on the statement. I don't agree with that, no.

BY MR. WATKINS:

Q. Before your arrest, Officer Nichols of the Jackson police department asked your group to move on out of the station several times, did he not?

A. Yes, I believe he did. One of the officers did. I can't place --

Q. Was he courteous?

A. Yes.

Q. And your group refused to obey that police order, didn't it?

A. We courteously stated that we planned to have lunch.

Q. And to make your answer more complete then, you, therefore, refused to obey the order, didn't you?

A. Well, now, we said we would get on our bus after we had lunch. We said we would move on, but we would have lunch first.

Q. You refused to obey the order given you at that time, didn't you?

A. Yes, we did refuse to obey it.

Q. Upon his arrival, Captain Ray asked your group to move on out of the station several times, did he not?

A. Yes.

Q. He offered to escort your group safely to your bus which was standing in the station, didn't he?

A. He said he would get us to the bus. I wasn't sure whether - He said "Come with me, and I will see that you get on the bus." I didn't know whether the bus was in the station yet or not.

Q. Didn't he say, "I will get you safely to the bus."?

A. I don't recall him using the word "safely", but he said, "I will get you on the bus."

Q. By the same token, you don't deny that he used the word "safely"?

A. No.

Q. Again your group refused to obey his order, didn't you - Captain Ray's?

A. Well, we discussed the matter with him too as a matter of being - Having eaten at seven-thirty, a fairly light breakfast - It was then eleven-thirty, and we had the prospect of a bus trip to Chattanooga, and we wanted to get something to take on the bus or to eat there.

Q. And to be more direct in your answer, for those reasons, you did refuse to obey Captain Ray's orders, didn't you?

A. Yes, that's right.

Q. And the reasons you have given were the only reasons you had for refusing to obey his order, were they?

A. The fact that we wanted to eat? Well, you don't - I don't - This is not part of my past experience. I don't usually walk into a bus terminal and be told to move on unless there is some reason known to me.

Q. If there are any other reasons that you have for refusing to obey his order, I want you to tell me about them.

A. I would say the main reason for, or at least a reason comparable to the fact that we wanted to have some lunch, was the fact that we didn't understand why he was telling us to move on.

Q. Any other reasons?

A. That's all I could state. All I can think of.

Q. Was Captain Ray courteous?

A. Yes.

Q. Your refusal to obey the orders of the police was an intentional and deliberate act on your part, was it not?

A. An intentional and deliberate act? I suppose if that means it is taken with recourse to a - to our own - to my thoughts, it could be considered - well --

Q. You know what the word "intentional" means, don't you, Reverend?

A. Yes, I can usually define words in a - out of context, but if they are in a context of a sentence, sometimes it has to be clarified for me. The intention was not to disobey the law. It was more - It seemed to me a case of, some men walk into a terminal, a police officer says, "Move on" three times, and we stand there somewhat taken aback. This had never happened to me before, and he says, "You are under arrest", and the captain comes and says the same thing three times and follows it with "You are under arrest." In this kind of situation I couldn't honestly say that I had intentionally and deliberately violated the law.

Q. That wasn't my question. I said, didn't you intentionally and deliberately refuse to obey the police orders?

A. Well, refusing to obey the police order is the same thing. When you stand somewhat dazed and find that you are under arrest, I can't say that I fully and completely intentionally and deliberately disobeyed the police order.

Q. You knew that refusal to obey the police orders would result in your arrest, didn't you, Reverend?

A. I would say that I knew that, yes. I know that to be the case.

Q. And that was the purpose of your trip, wasn't it?

A. No, that was not the purpose of our trip at all.

Q. You didn't want to be arrested?

A. No, we didn't. I didn't.

Q. Didn't you want to become a martyr to what you considered an unacceptable situation?

A. No, sir, I didn't.

Q. What attorneys represented you in your trial in the Municipal Court of the City of Jackson?

A. Attorney Jack --

Q. Jack Young?

A. Jack Young.

Q. What about Mr. Rachlin?

A. Mr. Rachlin was there with permission of the Court, and I believe that he did represent us, with the Court's permission.

Q. So you had both local counsel and New York counsel at that trial, is that correct?

A. Mr. Rachlin's position was, I think, entirely in the hands of the Mississippi Court, and if they okayed it, then he was our counsel.

Q. Who had furnished Mr. Rachlin's services to you?

A. They were obtained through the Episcopal Society as far as I know.

Q. He wasn't there as Chief Counsel for CORE?

A. I don't think he was representing CORE as far as we were concerned.

Q. Do you know whether he occupies that position?

A. I do not know whether he occupies it now or not. I have never seen his name on any CORE information that I have run across.

Q. Do you know whether he has represented any of the freedom riders?

A. I believe he has, but I don't have positive knowledge of that either.

Q. Did you or your attorneys request a trial by jury in the Municipal Court?

A. A trial by jury in the Magistrate Court, the first trial we had?

Q. Yes.

A. I don't know. I didn't think it was possible to request a trial by jury there.

Q. To answer my question specifically, you didn't ask for a trial by jury, did you?

A. I didn't specifically ask for one.

Q. Did you hear your attorneys ask for a trial by jury?

A. I don't think I did hear it.

Q. Were you present in Court in the case?

A. Yes.

Q. Did you testify on your own behalf in the Municipal Court?

A. No, I didn't testify.

Q. Do you take the position that the defendant, James L. Spencer, Judge of the Municipal Court, intentionally and falsely convicted you?

A. Intentionally —

Q. Falsely convicted you.

A. — convicted me. Again, that's a hard to assign intention, and if I could rephrase that to say that he wrongfully convicted me, I would say that.

Q. Do you take the position that he did so knowingly, knowing that he was doing it wrongfully?

A. Again, I can't impute motives of right or wrong to another man.

Q. And you wouldn't try to would you?

A. I think this is — I say that he was wrong, but you are asking me if I knew that he knew he was wrong, and I can't know what he knew.

Q. You wouldn't pretend to know? Do you have any evidence other than your own personal knowledge that the defendant, Judge Spencer, intentionally wrongfully convicted you?

A. Do I have evidence —

Q. Yes.

A. — that he intentionally wrongfully convicted me?

Q. Yes.

A. The only evidence I have is that we were convicted, and whether that is to be taken as intentional wrongdoing, I don't know. It was certainly wrongdoing.

Q. Do you take the position that the defendant, Judge Spencer, intentionally falsely imprisoned you?

A. I have to object to the phrasing of that question again on the same grounds that you are asking me to assign or to evaluate the Judge's intentions.

Q. Do you have any evidence that he intentionally falsely imprisoned you other than your personal knowledge on the matter?

A. The evidence that he - The only evidence, I say again, is that we were convicted.

Q. Reverend Pierson, do you take the position that the defendant, Judge Spencer, acted in concert with the other defendants in bringing about your arrest?

A. In bringing about my arrest? That's interesting. I never thought of the Judge acting in concert with the — I am not that familiar with the relationship here, or anywhere for that matter, between the judge, who passes sentence, and the arresting officers.

Q. What do you mean by the phrase, when you use it, "that the defendants acted in concert"?

A. I think I would put the action in different chronological order rather than to say that the - Well, I suppose it works out the same way whether the judge follows a certain procedure in dealing with cases that come before him or whether - I think that's the way I think of acting in concert, rather than to say that the judge - Your first question sounded as though you were asking a question, did the judge force the police officers to arrest us.

Q. Or conspire with them?

A. To conspire with them to have us arrested, and I don't - I hadn't thought of it that way.

Q. Do you have any evidence to that effect?

A. I don't know whether evidence will be presented or not.

Q. None that you know of?

A. I don't have any of my own evidence to present.

Q. Then, is it your position that the only improper conduct of Judge Spencer was the fact that he convicted you in Court?

A. The evidence is the entire trial, the trial and the evidence that was presented, and the conviction passed on the evidence presented. Yes, that is the --

Q. Do you complain of any act that Judge Spencer did other than the fact that he tried you and convicted you in Court?

A. May I simply say that my complaint is on file, and I can't recall the exact wording of it?

Q. I am not asking you with reference to the language in your written complaint. I am asking you today if you have any evidence of what you consider an improper action on the part of Judge Spencer other than what took place at your trial and what you consider to be an improper conviction?

A. I think - I don't personally have any that I can present.

Q. Do you have any evidence that anyone or more of the defendants conspired together to bring about your arrest and conviction?

A. Well, again, I don't have. Being one of a group of plaintiffs, I do not personally have any of this evidence.

Q. Is any group or organization sponsoring this lawsuit?

A. No.

Q. Is any group or organization financing this lawsuit?

A. No. Well now, about the finance, I think that ESCRU is handling financing for this. The original sponsoring group for the prayer pilgrimage is taking care of expenses for us now.

Q. Do you know who furnished the bond money for your release from the city jail?

A. Many donors. There were, I think, hundreds or thousands of donors.

Q. Who collected the money?

A. It was collected through parish churches, I think, through some dioceses and organizations and through ESCRU.

Q. How much was collected?

A. I don't know that either. I don't know the amount.

Q. Who furnished the security for cost funds which have been deposited in the registry of the Court in this case?

A. In this present case?

Q. Yes.

A. I assume that ESCRU has handled that too.

Q. You haven't?

A. I haven't.

Q. Does your church operate a separate but equal parish system in the north and in the south?

A. A separate but equal parish system in the north and in the south? I would say no.

Q. Well, what is meant then by the statement contained in Exhibit "A" for identification in the next to the last paragraph where it says: "Our 'separate-but-equal' parish system as it exists in the north as well as in the south is partly a result of the housing pattern, but also a contributory to it."? How do you explain that statement?

A. Well, when you say - I suppose you had something like that in mind when you asked that question. I would say that when you asked if the church maintains a separate but equal parish system, again, the use of words here - I think of "maintaining" as propagating and carrying out the necessary - all that's required to keep this system as it is, and I say no to that question. We do not maintain a separate but equal parish facility in the north or in the south. However, separate but equal facilities exist in the church.

Q. In the north and in the south?

A. Yes.

Q. And it is to that to which the statement refers?

A. Yes. Does it say that they maintain?

(Witness looks at instrument)

Q. Again, it is wholly indifferent to me whether you use the word "maintain" or not.

A. "'Separate-but-equal' parish system as it exists in the north as well as in the south is partly a result of the housing pattern but also a contributor to it."

Q. Is that a correct statement?

A. That statement is correct, yes. The fact that it exists, of course, doesn't mean that it exists everywhere.

Q. Does it exist in accordance with the rules and customs of your church?

A. No, it exists in opposition to the rules and customs of the church.

Q. Then, so far as your church is concerned, it is an unlawful or illegal status or condition?

A. That is difficult to - I would say that that's never been tested as far as canon law is concerned. I think if it were ever brought to a matter of what canons apply in interpreting this, I think it would be found unlawful as far as the church is concerned, but I don't think I could say it exists contrary to the law. There have been a number of statements from the bishops of the Ecumenical Communion who meet every ten years in Lambeth. There have been statements by the official general convention of the church in the United States. These have all maintained that segregation is contrary to God's law and, therefore, should be done away with, should not be allowed to continue to exist. Whether that can be construed as making it against the law inthe church to do, I couldn't say. I think the word "law" may have different connotations.

Q. Do you approve of that position of separate but equal facilities which exists in your church in both the north and in the south?

A. No, I don't.

Q. Have you ever attempted to change it by force in any church?

A. No, I have never attempted by force.

Q. Do I understand that you --

A. You don't think of persuasion as being any kind of moral force at all?

BY MR. RACHLIN: Do you understand the question, Bob?

A. Have I attempted by force? Would you clarify that term "force", whether it is moral or physical.

BY MR. WATKINS:

Q. Have you ever gone to a church which exercises the separate but equal policy and, contrary to the priest or minister in charge of that church's desires, integrated the church?

A. Well, if I have, the priest never said anything to me about it. I don't know the innermost desires of all men. Without laboring the question, I don't understand it that well to answer it.

Q. Do I understand that you are not in agreement with separate housing facilities for the two races?

A. That is right.

Q. Have you ever attempted to change or overthrow that system of separate housing facilities, forceably, anywhere it exists?

A. To change or overthrow. I would say that I had made an attempt to change that system.

Q. Did you do so on your trip to Detroit in September, 1961?

A. No, I didn't.

Q. Reverend Pierson, notwithstanding your failure, as I understand you today, to forceably attempt to change your church's custom of separate but equal church facilities, and notwithstanding your failure to attempt forceably to change separate housing facilities to which you object, you felt impelled, on your trip to Jackson, to physically challenge and defy legal authority in Jackson, Mississippi, didn't you?

A. Those two "notwithstandings" I am concerned about. I said if I - I didn't answer that first question. You didn't press for an answer.

Q. If I had pressed for an answer to every question that I've put to you, we would be here three days, Reverend.

A. I am afraid you are right.

Q. I'm leaving a lot of them hanging.

A. Well, those that you leave hanging had better be left hanging. I didn't say - I told you that I didn't understand the question about using, you said "forceably changing separate but equal facilities in parishes and forceably changing separate but equal facilities in housing", and actually I have attempted by persuasion to do both, and I think if I have answered this question - "Did you do this against the known desires of the priest or against the desires of the priest or minister of the parish?" — And I said if I did, he didn't say anything to me about it. Of course, I didn't know whether he was against it or not. I think that I have — I am sure that I have gone to parishes with Negroes, and I have also facilitated housing for Negroes, made possible housing for Negroes, but none of these were done by physical force or strong-arm methods.

Q. What you consider racial discrimination exists in your home parish to some extent, doesn't it?

A. In my home parish?

Q. Yes, sir.

BY MR. RACHLIN: Do you want to identify that for the record, Mr. Watkins?

BY MR. WATKINS:

Q. I am assuming you have a parish which you refer to as your home parish, haven't you?

A. Yes. Grace Church, White Plains, I would say.

Q. Now, my question was, does racial discrimination, in your opinion, in any form exist within the boundaries of that parish?

A. Within the geographical boundary of the area, of the popular area covered by that parish, yes, it does.

Q. Don't you think it would have been more in order for you to work on that situation existing in your own parish rather than go headline hunting to Jackson, Mississippi?

BY MR. RACHLIN: Note my objection for the record, on the grounds that it is argumentative, misleading, and irrelevant.

(Recess in hearing)

BY MR. WATKINS: (continuing)

Q. To go back a little bit, I believe we had agreed that what you considered some types of racial discrimination existed within the physical boundaries of your home parish?

A. Yes.

Q. And my next question was, don't you think it would have been more in order for you to work on that situation rather than go headline hunting in Jackson, Mississippi?

A. To take that question in parts, and the last part first, my intention, of course, was not to go headline hunting in Mississippi, so that's the answer to that part of the question.

Q. Just a moment. Let me ask you another one. Didn't your group discuss from time to time the type of press you were getting?

A. Oh, yes, that couldn't be avoided. As I mentioned, when I heard this on the radio in Jackson, it surprised me, and I mentioned it to the other members of the group. Some of them I said something to. I had a little transistor radio, and I didn't know whether anybody else had one or not.

Q. Throughout your trip, weren't you interested in the type of press you were getting?

A. No, I wouldn't say we were interested in the type of press. We were cognizant. In that sense interested, yes, in the type of press that we had.

Q. All right, let's agree that you don't think you were headline hunting in coming to Jackson, Mississippi. Let's go back to the other part of my question. Don't you think it would have been better for you to be working on what you believed to be discriminatory practices in your own parish rather than in a place as distant as Jackson, Mississippi?

A. Well, the answer to that is - First of all, my home parish is now Grace Church, White Plains. At that time my home parish was St. Luke's, Evanston. In the parochial limits of St. Luke's, Evanston, they could be assigned there in the city, I suppose, although there are four parishes in the city. I have an apartment building which I had assigned to Christ the King Foundation, and Christ the King Foundation turned it back to me, and I had to rent it, and I advertised the apartments. There were five of them vacant, and I put ads in the paper to rent them, and maintained that restrictive clauses in the ad would be contrary to my conviction, and, anyway, the result of this was that I rented one of the apartments to a Negro family, so I would say that — And this was in May or June or July, mid-July, I guess it was, of 1961, before I went to New Orleans on my - participating in the prayer pilgrimage to Detroit, during which we passed through Jackson.

Q. By renting that one apartment to a colored family, did you feel that you had thereby resolved all discriminatory problems north of the Mason-Dixon Line?

A. I should say not.

Q. Do I understand that ESCRU sponsored and financed your pilgrimage?

A. Sponsored and financed? Yes, they did. I think some of the transportation had to be handled by us individually though. The transportation to New Orleans had to be - One of the stipulations was that either our parish, or some other way, we had to supply that transportation money to New Orleans.

Q. Now, Reverend Pierson, I want a little of your personal background. I believe you received your B.S. degree from the University of Wisconsin in 1949?

A. That's right.

Q. Subsequently, you registered as a student at Garrett

Biblical Institute?

A. That is right.

Q. That was a Methodist Seminary, wasn't it?

A. Right.

Q. You disagreed with their teaching and dropped out, didn'tyou?

A. I wouldn't say so much I disagreed with their teaching. I was dissatisfied with their lack of teaching.

Q. You dropped out, didn't you?

A. Yes.

Q. You subsequently entered an Episcopal Seminary in Wisconsin, didn't you?

A. Yes.

Q. And you now find yourself in disagreement with many of the practices — and I am referring to separate but equal practices — of your own church, don't you?

A. Well, I am pleased and proud that official pronouncements made by the church have been straightforward and positive statements on the questions of racism. I am far from satisfied with the progress that the church has made so far in — that individuals within the church have made in implementing these statements that have been made by the general convention of the church, by the official governing body of the church. This is, of course, much different from my - My dissatisfaction with Methodism was with the official pronouncements, and in many ways Methodists have done far more. In a lot of places, Methodists have done a far better job than Episcopalians in the field of social action, social relations. In other words, my complaint - What you are making is a parallel between my dissatisfaction with Methodist and my dissatisfaction with Episcopalianism, but the complaint is on two different levels.

Q. But there have been grounds for dissatisfaction with both?

A. Dissatisfaction with official Methodism; dissatisfaction with unofficial lack of taking proper note of the official pronouncements of Episcopalianism. I consider myself in the mainstream of the Episcopal Church, whereas, I was way out of line in the Methodist Church.

Q. The first congregation of which you were priest in charge was predominantly Negro and West Indian, wasn't it?

BY MR. RACHLIN: Identify that, Mr. Watkins.

BY MR. WATKINS: I am asking him if the first church of which he served as priest in charge was not predominantly Negro and West Indian.

A. Yes, it was.

Q. Subsequently, some Puerto Ricans moved into the neighborhood and wanted to become members of the church, and the Negroes opposed their entrance into the church, didn't they?

A. A few did.

BY MR. RACHLIN: May I note my objection to the question, please.

BY MR. WATKINS:

Q. That was your one and only congregation in which you were the priest in charge, wasn't it?

A. Yes.

Q. Reverend, inability to agree with the practices of those around you has been your most consistent trait, hasn't it?

BY MR. RACHLIN: I object to that question.

A. No, I don't think so.

BY MR. WATKINS:

Q. You don't consider yourself a trouble maker?

A. No, not at all. In fact, I think the situation that you referred to of the Puerto Ricans that came into the parish, the thing was handled in very short order in one meeting, and the rest of the congregation dealt pretty well with the situation with regard to these few people who complained about a Spanish speaking worker coming in. Their complaint was not so much that he was coming in; it was that they were getting a Spanish speaking worker before they had a Negro worker, and these things that you read in newspapers and magazines sometimes get distorted.

Q. I have found that to be certainly true with Look Magazine.

A. You can't always take their statements on face value. We worked the situation out very well in the Bronx, and the Negroes and Puerto Ricans got along quite well together by the time I left.

Q. The first suggestion that you attend or take part in the pilgrimage was in the form of a letter from ESCRU, was it not?

A. That is right.

Q. As a result of that invitation, you sent in a written application to ESCRU, didn't you?

A. That is right.

Q. I asked you earlier, and you don't have copies of those documents with you, do you?

A. Not with me, no.

Q. Now, you accepted that invitation to join the pilgrimage primarily because you did not have a job at the time, didn't you?

A. No, not primarily. I would say that I accepted it primarily on conviction. Reasons presented as to why a person -- Well, that's all I'll say. I accepted it primarily out of conviction.

Q. Did you have a job?

A. I didn't have what you call gainful employment. I had plenty of tying up work to do with Christ the King Foundation.

Q. After being accepted for the pilgrimage, did you not tell your wife that you had been "accepted for a freedom ride"?

A. No, I don't think I did. I think that's something that crept into the terminology of the reporter that did the Redbook story.

Q. Did you ever correct any quote that appears from you in the Redbook story?

A. Yes, I did correct several of those. I missed a few important ones, not necessarily dealing with this incident, but dealing with Christ the King Foundation matters.

Q. Were those corrections in writing?

A. Some of them were.

Q. May I see them?

A. Oh, I don't - McCall's has them; I don't have them. They were noted on the manuscript, and the manuscript was sent out to me in California when I was on a trip, and I had to get it back Special Delivery, and I was trying to write a sermon that night and trying to go over that manuscript, and I hit the high points, and I didn't have an opportunity to go over it carefully.

Q. But you did approve the manuscript before it was published?

A. They gave me the opportunity of looking it over. They didn't promise me that what corrections I made were going to stay. I may have changed that freedom ride thing, and they may have kept it in.

Q. Did they publish it as you corrected it?

A. I am not sure about that, because I didn't have a copy of the corrections I made. As I explained, the thing was sent to me in San Francisco, and I had to send it right back that - the next morning.

Q. Since the publication of the article in the magazine, have you taken issue with any fact or quotation attributed to you in that article?

A. To the author or to the publisher?

Q. To the author or to the publisher, or to the public, in any form that would correct any error that was in it?

A. Yes, I made several statements about that to different people.

Q. To whom?

A. Oh, I think to my wife and to my partner, and I mentioned it to the author. No, I didn't mention it to the author, but I mentioned it to the publisher's representative.

Q. On the way to Jackson, I believe you did have an integrated meeting at the church in McComb, is that correct?

A. Right.

Q. Did you later refer to that as a narrow escape from the law?

A. Was that in that Redbook article? I don't remember. I know that it was thought to be a narrow escape at that time because a police car saw the bus stop, saw us file out, go into the church, and the bus drove away to get some equipment, something done to his mechanical system, and the police stayed, and we didn't know why they stayed. We found out later that they -- Well, we didn't know why they stayed, but we found out that integration of that particular parish in McComb was not a new thing; that it was apparently very well accepted in McComb.

Q. Did you know, Reverend, that the two oldest churches in this town - the two largest churches in this town were, for many, many years, integrated, and that that condition ceased to exist because the Negroes no longer wanted it that and withdrew to form their own church?

A. Well, that's your statement of opinion.

Q. I asked you if you knew that?

A. I can't know a thing like that. I wouldn't - I don't believe it's true.

Q. You don't believe it? Did you know that the first segregated school was created in Mississippi by a Legislature in 1870, I believe, and a Legislature which was predominantly colored?

A. I didn't know that. That is a statement of fact which I can't dispute. I didn't know that.

Q. As a prelude to your visit to Mississippi, there are some things that you didn't investigate very carefully as to the history of the separation of the races here, are there not?

A. You mean Mississippi, or Jackson in particular?

Q. Mississippi in general and Jackson in particular.

A. I know many of the arguments against integration, and I know that one of the - what is thought to be one of the strongest arguments against integration is that the Negroes don't want it, and I know that not to be a fact, and I know that every Negro that I know thinks otherwise about it.

Q. How many members of the colored race do you know in Jackson, Mississippi?

A. In Jackson, Mississippi? I don't think I know any. I met a couple of pretty nice guys in jail, but I don't know their names.

Q. Did you find the Tougaloo faculty impressive?

A. Yes, I was, as a matter of fact, impressed by them.

Q. Which members?

A. Well, just the general - all that I met I was favorably impressed by. The President. We met the Dean of Students, I guess, and I knew they are - some of them are Negroes, and I could say then that I know Dean Branch, for instance, the only name I can think of at the moment.

Q. At the terminal where you were arrested, did Captain Ray say, "Now, I'm telling you,men, there won't be any trouble here. I'll get you on that bus. There won't be any trouble if you will just follow me."? Did he say that?

A. I would say it was certainly close to that. If a word or so is left out or —

Q. That's in substance what he said?

A. In substance, I would say.

Q. What present position do you hold with the church?

A. I am curate of Grace Church in White Plains. I am Vice Chairman of Christ the King Foundation.

Q. During your trip from New Orleans to Detroit, did you attempt to forceably change any existing conditions at any place other than Jackson, Mississippi?

BY MR. RACHLIN: You are talking about him personally now?

BY MR. WATKINS: Yes, sir.

A. From the trip from New Orleans to Detroit did we attempt forceably other than Jackson, Mississippi. In other words, assuming that this attempt to eat lunch in a Jackson Trailways bus terminal was a forceable attempt to integrate?

Q. Well, my way of putting it would be that your deliberate refusal to obey a police order was a forceable act.

A. Well, I suppose you might say we forceably integrated St. Thomas - Is that the name of that parish school at Metairie?

BY REVEREND MORRIS: St. Martin's.

A. St. Martin's.

BY MR. WATKINS:

Q. Did you do that over the person in authority's objection?

A. No, I don't think so.

Q. Well, that would hardly be comparable to what you did in the Jackson station where you went contrary to the person in authority's directions to you, would it?

A. Well, I didn't know what the man was going to say when we walked in. We were whites and Negroes. If he had said, "Move on.", I suppose we would have had the same stunned silence and inactivities that we had in the Jackson bus terminal. The action on our part was the same. We walked into the place integrated. If our bodily presence there means that we forceably integrated it -- I would object to the use of forceable integration.

Q. Did you act contrary tothe orders of the persons in authority in any place other than Jackson, Mississippi?

A. The difference there would be that no one told us not to do what we were doing.

Q. Then, your answer to me would be "no", wouldn't it?

A. It would be "no", yes.

BY MR. WATKINS: I believe that's all.

I have read my testimony as set out on the foregoing pages and the same is correct.

This the ____ day of ____________________, 1963.

STATE OF ______________

COUNTY OF ____________

____
Robert L. Pierson

SWORN TO AND SUBSCRIBED BEFORE ME, this ____ day of __________, 1963.

____
NOTARY PUBLIC

Marked for identification to Rev. Pierson's deposition 2/15/63 M

MESSAGE TO THE EPISCOPAL CHURCH'S 60TH GENERAL CONVENTION, DETROIT, MICHIGAN, SEPTEMBER 17-29, FROM THE CLERGY ON THE PRAYER PILGRIMAGE BETWEEN NEW ORLEANS AND DETROIT, SEPTEMBER 12-17:

As priests of the Church, we have prepared this statement to interpret the message we bear to the General Convention by our journey from New Orleans. While we speak only for ourselves, we represent the concern of many more Churchmen: those who have given of their substance to make the journey possible and of their prayers to sustain us, and all others concerned that the Church be more truly itself.

Our message to the Church is that the Church must become, in every phase of its life, that which by the grace of God it is - one Holy Fellowship where racial barriers have been done away.

We recognize and share in the Church's appalling failure to express this in its life. We are justifiably chided by the irreligious for the emptiness of our pronouncements. We are also aware that individual circumstances determine the immediate and direct steps to be taken by Christians in a particular place, but nothing can be allowed to blurr for us what the perfect Will of God is. We seek by our journey to express our common repentence and witness to His Will.

Since the Church is one, even as the nation is one, we rejoice that our number includes clergy from one ocean to the other and from the Great Lakes to the Gulf. As members one of another in Jesus Christ, we recognize our responsibility for the health of His Church wherever the Gospel is planted; and as citizens of one country we reject sectionalism that would limit the active expression of love for oppressed brothers anywhere. At neither our starting point in the South or our destination in the North, nor in the larger areas they represent, have we any reason for complacency over the quality of Church life in which we all are involved, or its effect in the general community.

At the beginning of our journey we shall see segregation in the Body of Christ as found in some of the educational facilities we are to visit. We believe it to be a tragedy that Church schools and colleges ever should have been closed to some, and a tragedy of immense proportions that they have lagged behind the state in the removal of racial restrictions. 1

At the end of the pilgrimage we shall consider the more subtle and difficult question of separation, both within the Church and the community. At a suburb of Detroit we will confer with local clergy on the role of the churches in overcoming discriminatory housing practices. Men are forced to live in separate areas and they go to separate churches. Our "separate-but-equal" parish system, as it exists in the North as well as the South, is partly a result of the housing pattern, but also a contributor to it. Clerical appointments reflect the fact that we have made parish life an adjunct to racial separation in the community. 2

Whether with the dying forms of segregation or the elusive, but equally fragmenting devices for the separation of Christ's Body and the community, Churchmen everywhere have work to do. We are making our journey so that the Church might focus on the needs, and gain renewed understanding of its task. In places where our coming may be regretted by some, we will seek opportunities to confer with the clergy so that greater understanding may be had by all. We sincerely hope to conclude our pilgrimage without interruption, but we cannot enjoy the luxury of being exempted from consequences born out of our conviction that the Church is one and that we, as Christians, cannot be divided according to the ways of the world. It is in His Name that we go forth, and to Him we offer ourselves, our souls and bodies. In these days of [illegible] Church, at least, be found [illegible] 3

THE DAILY WORKER

May 26, 1928, Page 6

The Communist Party considers it as its historic duty to unite all workers regardless of their color against the common enemy, against the master class. The negro race must understand that capitalism means racial oppression and Communnisum means social and racial equality.

DEMANDS

1. Abolition of the whole system of race discrimination. Full racial equality.
2. Abolition of all laws which result in segregation of Negroes. Abolition of all Jim Crow laws. The law shall forbid all discrimination against Negroes in selling or renting houses.
3. Abolition of all laws which disenfranchise the Negroes on the ground of color.
4. Abolition of laws forbidding inter-marriage of persons of different races.
5. Abolition of all laws and public administration measures which prohibit, or in practice prevent, Negro children or youth from attending general public schools or universities.
6. Full and equal admittance of Negroes to all railway station waiting rooms, restaurants, hotels, and theatres.
7. The War and Navy Department of the United States Government should abolish all Jim Crow distinctions in the army and navy.
8. Immediate removal of all restrictions in all trade unions against the membership of Negro workers.
9. Equal opportunity for employment, wages, hours, and working conditions for Negro and white workers.

Copy From The Library of Congress

Defendants' Exhibit "B" for
Identification 2/15/63

I, Mildred A. Baker, Notary Public in and for Hinds County, Mississippi, hereby certify that to the best of my skill and ability, I reported in shorthand and on tape recorder all the questions asked and the answers made by the parties stated in the foregoing matter, and that the foregoing is a full, true and correct transcript of the testimony so taken pursuant to the stipulation heretofore set out.

This ____ day of March, 1963.

Mildred A. Baker

IN THE

Supreme Court of the United States

October Term, 1965

No.

ROBERT L. PIERSON, et al.,
Petitioners,

v.

J. L. RAY, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CARL RACHLIN,
No. 38 Park Row,
New York, N. Y. 10038.

MELVIN WULF,
No. 156 Fifth Avenue,
New York, N. Y.

Of Counsel:

FREDERICK A. O. SCHWARTZ, JR.,
LEONARD H. ROSENTHAL,
STEPHEN M. NAGLER.

INDEX

PAGE

Citations to Opinion Below 1

Jurisdiction 2

Questions Presented 2

Statute Involved 3

Proceedings Below 4

Statement 4

- A. Petitioners' Arrest and Confinement 4
- B. Petitioners' Conviction by Respondent Spencer .. 7
- C. The Subsequent Decision at a Trial De Novo That There Had Been No Evidence Against Petitioners 9
- D. The Trial and Appeal of This Action 9

Reasons for Granting the Writ

- I. Certiorari should be granted to review the holding that a police justice who acts under color of state law or custom knowingly to deprive persons of rights secured by the Constitution and laws of the United States is immune from liability under a statute that applies, without exception, to "every" person, that was said by the Congress that enacted it to apply to judges and that was intended to create a remedy for sham justice in the courts 12
- II. Certiorari should be granted to review the holding that policemen are not liable in damages for depriving persons of their constitutional rights if the persons so deprived know that the policemen might disregard their constitutional rights but nevertheless chose to exercise those rights 16

PAGE

III. Certiorari should be granted to review the holding that policemen are not liable for making arrests when they use a statute that subsequently is declared unconstitutional on its face as a sham basis for the arrest 18

Conclusion 20

Appendix A 1a

CITATIONS

Cases:

Cauley v. *Warren,* 216 F. 2d 74 (7th Cir. 1950) 15fn
Edwards v. *South Carolina,* 372 U. S. 229 (1963) 8
Francis v. *Crafts,* 203 F. 2d 809 (1st Cir.), *cert. denied,* 346 U. S. 835 (1953) 15fn
Ginsberg v. *Stern,* 225 F. 2d 245 (3d Cir. 1955) 15fn
Ginsberg v. *Stern,* 251 F. 2d 49 (3d Cir. 1958) 15fn
Golden v. *Thompson,* 194 Miss. 241, 11 So. 2d 906 (1943) 19
Kenney v. *Fox,* 232 F. 2d 288 (6th Cir. 1956) 15fn
Land v. *Dollar,* 330 U. S. 731, 734, n. 2 (1947) 18
Larsen v. *Domestic & Foreign Commerce Corp.,* 337 U. S. 682, 685, n. 3 (1949) 18
McShane v. *Moldovan,* 172 F. 2d 1016 (6th Cir. 1949) 15
Miller v. *Stimmett,* 257 F. 2d 910 (10th Cir. 1958) 19
Nesmith v. *Alford,* 318 F. 2d 110 (5th Cir. 1963) 19
Picking v. *Pa. R. Co.,* 151 F. 2d 240 (3d Cir. 1945) 15, 15fn
Tate v. *Arnold,* 223 F. 2d 782 (8th Cir. 1955) 15fn
Tenney v. *Brandhove,* 341 U. S. 367 (1951) 15fn, 16
Thomas v. *Mississippi,* 380 U. S. 564 (1965) 8
United States v. *General Motors Corp.,* 323 U. S. 373, 377 (1944) 18

	PAGE
Statutes	
28 U. S. C. §1254(1)	1, 18
28 U. S. C. §1332	4
28 U. S. C. §1343	4
42 U. S. C. §1983, 17 Stat. 13, Sec. 1	2, 3, 4, 12, 16, 17
14 Stat. 27, Sec. 2	14
19 Stat. 268, Sec. 4	12fn
20 Stat. 27	12fn
Revised Statutes of 1878, Sec. 1979	12fn
Miscellaneous	
Cong. Globe, 39th Cong., 1st Sess.:	
pp. 1679-1680	14
pp. 1758-1759	14fn, 16fn
p. 1778	15fn
p. 1837	15fn
Cong. Globe, 42nd Cong., 1st Sess.:	
p. 365	13
p. 368	13
p. 374	13fn
p. 376	13
p. 385	13
p. 394	13fn
p. 429	13fn
p. 654	13fn
p. 820	13fn
Appendix, p. 68	14
p. 217	13

IN THE

Supreme Court of the United States

October Term, 1965

No.

◆

Robert L. Pierson, *et al.*,

Petitioners,

v.

J. L. Ray, *et al.*,

Respondents.

◆

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on October 25, 1965.*

Citations to Opinion Below

The District Court for the Southern District of Mississippi, Jackson Division, wrote no opinion. Its judgment and order is at R. 645-648.* The opinion of the Circuit Court of Appeals, printed as Appendix A hereto, is reported at 315 F. 2d 213.

---

* In addition to the persons named in the caption, there are the following additional petitioners and respondents: *Petitioners*: John B. Morris, James P. Breeden and James G. Jones, Jr.; *Respondents*: J. B. Griffith, D. A. Nichols and James L. Spencer.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on October 25, 1965. On January 21, 1966, Mr. Justice Black signed an order extending petitioners' time within which to file a petition for certiorari to and including February 24, 1966. Jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

Questions Presented

1. Whether a municipal police justice (a) alleged to have conspired with police officers to have white and Negro Episcopal ministers arrested and knowingly convicted by him and sentenced to jail for seeking to use the waiting room of an interstate bus station that was posted "White Waiting Room Only—by Order of the Police Department" in order to enforce the segregation laws, customs, policies and usages of the State of Mississippi, and (b) whose conviction of the ministers for violating a statute that prohibited congregating under such circumstances that a breach of the peace might be caused was subsequently reversed at a trial *de novo* at the close of the prosecution's case on the ground that there was no evidence against the ministers, is immune from a suit for damages under 42 U. S. C. §1983, which (1) provides without exception that

---

* References preceded by "R" are to the pages of the mimeographed record used on the appeal to the Fifth Circuit.

"every" person who commits such an act shall be liable in damages, and (2) was thought by the Congress that enacted it to apply to such conduct by such judges.

2. Whether police officers are immune from liability for damages under 42 U. S. C. §1983 for acting under color of state law and custom to deprive persons of rights secured by the United States Constitution and laws because those persons had reason to believe that police officers might arrest and jail them illegally in order to preserve segregation but nevertheless chose to exercise their constitutional right to travel as an integrated group.

3. Whether if under state law police officers are not liable in damages for false arrest when the "breach of the peace" statute under which they purported to make the arrest had not yet been judicially declared unconstitutional, there does not remain a jury issue as to whether this statute was used as a sham justification for the arrest.

Statute Involved

The statute involved is Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. §1983.

As printed in Title 42, the Section reads:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured at law, suit in equity, or other proper proceeding for redress."

Proceedings Below

Petitioners brought suit in the United States District Court for the Southern District of Mississippi, Jackson Division, against three policemen and one police justice of Jackson, Mississippi. The suit was for damages under (a) 28 U. S. C. §1343 alleging a cause of action under 42 U. S. C. §1983 and (b) 28 U. S. C. 1332 alleging diversity of citizenship and a cause of action for false arrest and imprisonment under Mississippi law. Judgment in favor of defendants-respondents were entered upon a jury verdict.

Upon appeal, the Fifth Circuit (1) reversed the judgment as to the policemen with respect to the federal cause of action under 42 U. S. C. §1983 but remanded with instructions that plaintiffs should not be permitted to recover if they knowingly went to a place where travelling as an integrated group would subject them to illegal arrest, (2) directed that the state law cause of action against the policemen should be dismissed and (3) held that the police justice was immune from suit under both causes of action and directed that the complaint against him should be dismissed.

Statement

A. Petitioners' Arrest and Confinement.

Petitioners are three white and one Negro Episcopal clergymen. As members of a "Prayer Pilgrimmage" they sought, in September 1961, to visit church institutions in both the South and the North, from New Orleans to Detroit, in order to deliver and dramatize their "message to the Church that the Church must become, in every phase of its life, that which by the grace of God it is—one Holy Fellowship where racial barriers have been done away" (Defendants' Exhibit No. 1, R. 132).

On September 13 the clergymen arrived in Jackson, Mississippi, planning to take a Continental Trailways bus to Chattanooga, Tennessee.

At approximately 11:30 a.m., petitioners and eleven other Episcopal clergymen (nine white, two Negro) all dressed in clerical garb, arrived at the Jackson Trailways Bus Terminal in three taxis from Tougaloo College where they had spent the previous night. The bus to Chattanooga was scheduled to depart shortly after noon (R. 88-90, 180-181, 375-376, 463-464).

The ministers entered a waiting room, the entrance to which was marked "White Waiting Room Only—by Order of the Police Department" (R. 488-489, 270-277, 519-520). After entering the waiting room, they turned left to enter a restaurant. However, before more than four or five had passed through the restaurant doors, respondents Griffith and Nichols, Jackson police officers who had been waiting for the group to arrive,* ordered the group to "hold it" or "come out" (R. 90-93, 182-185, 376-378, 464-465, 545-546).

The ministers then gathered in the waiting room, outside the restaurant, and were told by the police officers to "move along". When the ministers said that they only wanted to eat and asked why they could not do so they were not answered but again told to move on. When they did not, they were arrested (R. 95-96, 186-187, 379, 465).

---

* Petitioner Jones testified that as the ministers passed the two police officers standing in the waiting room doorway, he heard one of them say "shall we get them now or later" (R. 91).

Defendant Ray, a superior police officer, then arrived. He walked directly to the ministers, ordered them to move along and when they again did not do so but explained that they were hungry and wished to eat before their bus departed, he placed them under arrest, put them in a paddy wagon and sent them to jail (R. 99-100, 189-191, 370-382, 467-469).

Petitioners testified that (1) no one followed them into the station, (2) the waiting room was quiet and (3) no one in it threatened them by word or gesture (R. 93-98, 181, 186-192, 376, 378-380, 463, 466-469). That testimony was confirmed by Father Layton P. Zimmer, a fellow Episcopal priest who was in the station in nonclerical garb and who observed petitioners' arrest (R. 546-550).

The arresting officers conceded that the ministers were orderly and quiet (R. 506, 583, 598; opinion below, Appendix A, p. 2A). However, the policemen said that there was a "crowd" in the station in an "ugly" mood and that consequently they feared that the ministers might be attacked (R. 494-496, 575-578, 592-593, 603-612). But when pressed about the crowd and its uugly mood, Officer Griffith conceded that "I just noticed maybe two or three of them mumbling, kind of saw them jabbering a little to each other . . . off at a distance, something like that (R. 496, 612).* Furthermore, there was no evidence whatsoever that any hostile persons were in the restaurant, which the police prevented the ministers, but no others, from entering.

---

* Similarly, Officer Nichols admitted that he did not mention an ugly mood when he telephoned the police station to obtain defendant Ray (R. 490).

The police conceded that they made no effort whatsoever to arrest the persons whom they claimed were in an ugly mood (or mumbling at a distance). Nor did they ask such persons to leave, or even say a word to them or caution or calm them in any way (R. 495, 584-585, 611-612). That the real aim of the police was to enforce segregation customs and laws is revealed by the police testimony (1) that it was wrong for whites and Negroes to be together in bus stations or anywhere (R. 485, 502); (2) that a Negro had never gone into that part of the station and not been arrested (R. 500); and (3) that "if [the ministers] did it again today" they would again arrest them (without any reference to a supposed ugly crowd) (R. 49).

B. Petitioners' Conviction by Respondent Spencer.

Two days after their arrest, petitioners were tried in the court of defendant Spencer, a police justice serving at the pleasure of the Mayor of Jackson (R. 272). Petitioners were tried upon a "General Affidavit" of defendant Ray which said that petitioners:

> ". . . with intent to provoke a breach of the peace, did then and there willfully and unlawfully congregate with others in or around . . . a place of business engaged in selling or serving members of the public, and did then and there fail or refuse to disburse and move on as then ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi." (R. 110-111; 238-239; 390.)

Seven months after petitioners' convictions, the State sought and obtained leave to amend the affidavit in respect of the three white petitioners (Pierson, Morris and Jones) by (1) striking the words "with intent to provoke a breach of the peace, did then and there wilfully and unlawfully" and substituting "under such circumstances that a breach of the peace might be occasioned thereby, did then and there", (2) adding the words "wilfully and unlawfully" prior to the words "fail or refuse" and (3) substituting "disperse" for "disburse" (R. 117-119, 238-239, 390).

The affidavit in its original and its amended form was written in terms of Section 2087.5 of the Mississippi Code, which had been enacted in 1960. Section 2087.5 subsequently was declared unconstitutional by this Court (at the same time as it granted the petition for certiorari) in a case similar to petitioners' which also arose from Police Justice Spencer's court *Thomas* v. *Mississippi,* 380 U. S. 564 (1965). Cf. *Edwards* v. *South Carolina,* 372 U. S. 229 (1963).

Defendant Spencer convicted petitioners of violating that statute and gave them the maximum sentence—four months in jail and a $200 fine.

Defendant Spencer admitted there had been no evidence that petitioners were disorderly in any way (R. 511-512). He also admitted that he had never researched the law as to whether a person was ever entitled to decline to obey an improper order of a police officer and he assumed that one was never entitled to do so (R. 516).

Instead, at petitioners' trial, he read to them an article of religion from the Episcopal book of Common Prayer dealing with the duty of priests to obey civil authorities and gave his opinion that petitioners were "guilty" of violating that article (R. 532-539).

Police Justice Spencer had tried all the cases (some 50 trials and 300 defendants) which had previously arisen out of the efforts of integrated groups to use the Jackson bus terminal (R. 517-518).

C. The Subsequent Decision at a Trial De Novo That There Had Been No Evidence Against Petitioners.

Petitioners' convictions were vacated after trials *de novo* in the County Court of Hinds County. Petitioner Jones was the first to be retried. After the City offered its evidence, Jones moved for a directed verdict of not guilty; the County Judge granted the motion and adjudged him not guilty (R. 481-482). The County Court then granted the prosecutor's motion to *nol. pross.* the cases against the two other petitioners on the grounds that the evidence against them was the same as the evidence against Jones (R. 234-235, 245, 396).

D. The Trial and Appeal of This Action.

The jury found for respondents after the trial court had permitted petitioners to be examined about the following matters:

1. Whether they agreed with the Communist Party's demands dealing with race relations as set out in quotations from the *Daily Worker* of May 26, 1928 (R. 155-165);

2. Whether they believed in the abolition of all laws prohibiting intermarriage of persons of the Caucasian and the Negro races (R. 415-417, 160);

3. Whether they supported the "Freedom Ride Invasion" of Jackson (R. 214-219) and whether they supported the purposes and activities of those groups that call themselves Freedom Riders (R. 142-149, 225-253, 260-261, 268, 357, 405, 407, 409, 412-412);

4. Whether their attorneys in Police Justice Spencer's court had previously represented many Freedom Riders (R. 416);

5. Whether their trial counsel was the general counsel for the Congress of Racial Equality (CORE) (R. 419, 229-230, 317); and

6. Whether petitioner Pierson had suggested any corrections in a magazine article that had referred to a New York newspaper headline stating "Arrest Son-in-Law of Governor Rockefeller as 'Freedom Rider' " (R. 425-426).

In addition, the trial court permitted nine letters written by Petitioner Morris to prospective and actual members of the Prayer Pilgrimage to be introduced and extensively used in cross-examination concerning the aims of the Prayer Pilgrimage and the beliefs of Father Morris (R. 249-270, 278-362).

On the basis of the letters, the defense contended (1) that the ministers knew that travelling as an integrated group might subject them to arrest and jailing and (2) that the ministers prepared for the possibility that some of their members would be arrested and jailed.

On appeal, the Fifth Circuit Court of Appeals held the following:

A. *Policemen Defendants*:

1. The judgment in their favor in the civil rights cause of action, 42 U. S. C. §1943, should be reversed because the trial court permitted questions dealing with (1) their views on race as compared with the *Daily Worker's* and (2) the Freedom Riders, with whom, said the court, no connection was shown.

2. Petitioners would be entitled to a directed verdict on the issue of liability in the civil rights cause of action because their arrests were improper *but* the case should be remanded for a hearing on the merits because proof that petitioners planned to go to places where their orderly traveling as an integrated group might subject them to arrest would preclude recovery.

3. Without regard to the reasons for which they made the arrests or the circumstances existing at the time of the arrests, the policemen were immune from liability under the diversity cause of action for false arrest because the statute under which they purported to arrest petitioners had not yet been held unconstitutional.

B. *Police Justice Spencer* was immune from liability under both causes of action on the ground that he was a judicial officer and the complaint against him should therefore be dismissed.

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING THAT A POLICE JUSTICE WHO ACTS UNDER COLOR OF STATE LAW OR CUSTOM KNOWINGLY TO DEPRIVE PERSONS OF RIGHTS SECURED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES IS IMMUNE FROM LIABILITY UNDER A STATUTE THAT APPLIES, WITHOUT EXCEPTION, TO "EVERY" PERSON, THAT WAS SAID BY THE CONGRESS THAT ENACTED IT TO APPLY TO JUDGES AND THAT WAS INTENDED TO CREATE A REMEDY FOR SHAM JUSTICE IN THE COURTS.

A. It is apparent from legislative history of 42 U. S. C. §1983, 17 Stat. 13, Section 1 of the Civil Rights Act of 1871, that Congress intended state court judges to be liable in damages if they acted under color of state law or custom knowingly to deprive a person of rights, privileges or immunities secured by the Constitution of the United States. This is not to say that a mere error of judgment or non-willful abuse of discretion would be actionable. Rather a willful and knowing "deprivation of any rights, privileges or immunities" is the basis of remedial action.

The statute provided for no exceptions. It made "any" person who so deprives "any" person liable in damages.*

---

* As altered by the revisor who prepared the Revised Statutes of 1878, the statute refers to "every" person who deprives "any" person of his rights. "Every is just as inclusive as "any", but as originally enacted the prallelism of "any" in describing culprit and victim makes it even clearer that Congress did not intend to sub silentio immunity to judges.

The revisor removed other language that textually made it clearer that no immunity was intended. As enacted, the section stated that any person shall be liable for depriving persons of their constitutional rights, etc., under color of state law, custom, etc., *"any such law, statute, ordinance, regulation, custom or usage to the contrary notwithstanding"*. (Emphasis supplied to the words that were removed.)

The revisor lacked authority to alter the law substantively. See Revised Statutes of the United States, 1878, Preface, p. 4; Appendix, pp. 1092-1093; 19 Stat. 268, ch. 82 §4 as amended by 20 Stat. 27, ch. 26. Title 42 has not been enacted into positive law.

All the members of Congress who spoke on the problem explicitly stated that the section applied to judges. None disagreed. See *Congressional Globe*, 42d Cong., 1st Sess., 1871: Congressman Arthur, 3/31/71, p. 365, col. 3—p. 366, col. 1; Congressman Sheldon, 3/31/71, p. 368, col. 1; Congressman Lowe, 3/31/71, p. 376, col. 1; Congressman Lewis, 4/1/71, p. 385, col. 1. *Cf.* Senator Thurman, 4/13/71, p. 217, col. 1 (Appendix).

Congress was concerned not with protecting good men against having to face charges of wrongdoing but rather with defiance of law by mobs and officials including judges. Congress was concerned that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress."* It was shocked at the record of many judges.** It was, indeed, the breakdown of justice that gave rise to the need for legislation.

If it be said that it is harsh or unwise to subject the state judiciary to suits alleging that they knowingly acted to deprive a man of his civil rights, the simple answer is that Congress in 1871 intended harsh remedies to check bloody terror, stubborn defiance and abuse of legal process. A bloody civil war had been fought. Congress had ousted state governments altogether and put in military governments. And then after terror against and injustice to the newly freed blackmen and the loyalists spread, Congress enacted the Civil Rights Act of 1871. Other sections of that Act were potentially far harsher than applying Section 1 to judges. See, *e.g.*, Sections 3, 4 and 6.

---

* Congressman Lowe, 3/31/71, p. 374, col. 3.

** See for example: Senator Sherman (summing up conference report) "Spreading terror and violence . . . now exist unchecked by punishment, independent of law, uncontrolled by magistrates." 4/19/71, p. 820, col. 2.

Congressman Rainey: "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity." 4/1/71, p. 394, col. 3.

Congressman Bentley: The remedy is needed because of "prejudiced juries and bribed judges". 4/3/71, p. 429, col. 2.

Senator Osborn: "These men with hands stained with blood, hostile to every man who stood by his country during the war, determined by fair means or by foul, that loyal men shall not remain in power, ought not to sit upon juries and administer the laws enacted to punish their own crimes." 4/13/71, p. 654, col. 2.

The legislative history of Section 2 of the Civil Rights Act of 1866, 14 Stat. 27, also supports the conclusion that the 1871 Congress intended to cover the state judiciary. It does so because (1) the similar terms of the earlier Act were specifically referred to as a guide to the 1871 Act by its principal sponsor, Congressman Shellabarger, when he introduced the 1871 Act, *Cong. Globe,* 42d Cong., 1st Sess. 1871, 3/28/71, p. 319, col. 3, printed in Appendix, p. 68, col. 1 and (2) the temper of the earlier Congress casts light upon that of the later Congress. President Andrew Johnson vetoed the 1866 Act after it was first passed on the ground, among others, that it subjected state judges to criminal liability for depriving persons of their civil rights. *Cong. Globe,* 39th Cong., 1st Sess., 3/27/66, pp. 1679, 1680, col. 2. Congress re-enacted the Act over the President's veto and in so doing specifically stated that it was intended that judges who knowingly used their office to deprive persons of their civil rights should be punished.*

---

* See Senator Trumbull, Chairman of the Committee on the Judiciary, who led the effort to overrule the veto, at *id.,* 4/4/66, pp. 1758-59, passim and in particular:

(continued on page 15)

B. The decision below conflicts with the decision of the Third Circuit in *Picking* v. *Pa. R. Co.*, 151 F. 2d 240 (3d Cir. 1945). *Cf. McShane* v. *Moldovan*, 172 F. 2d 1016 (6th Cir. 1949). *Picking* is the only decision dealing with the question of judicial immunity under Section 1983 to consider any part of the legislative material referred to above. See 151 F. 2d at 251, n. 12.*

(continued from page 14)

> "But it is said that under this provision judges of the courts and ministerial officers who are engaged in the execution of any such statutes may be punished. . . . I admit that a ministerial official or a judge, if he acts corruptly or viciously or under color of an illegal act may be and ought to be punished. . . ."
>
> "The assumption that State judges and other officials are not to be held responsible for violations of United States laws, when done under color of State statutes or customs, is akin to the maxim of the English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which the rebellion was hatched."

See also Senator Johnson, *id.*, 4/5/66, p. 1778, col. 1; Senator Cowan, 4/5/66, p. 1783.

Congressman Lawrence, the only speaker on the subject in the House, said:

> ". . . it is better to invade the judicial power of the State than permit it to invade, strike down, and destroy civil rights of citizens. . . ." *Id.*, 4/7/66, p. 1837, col. 1.

* After this Court's decision in *Tenney* v. *Brandhove*, 341 U. S. 367 (1951), holding that state legislators were immune from liability under (the predecessor of) Section 1983, the Third Circuit has queried whether it would still reach the result of *Picking*. See *Ginsberg* v. *Stern*, 251 F. 2d 49 (3d Cir. 1958); *Ginsberg* v. *Stern*, 225 F. 2d 245 (3d Cir. 1955). For cases relying upon *Tenney* to hold that judges were immune, see *Kenney* v. *Fox*, 232 F. 2d 288 (6th Cir. 1956); *Tate* v. *Arnold*, 223 F. 2d 782 (8th Cir. 1955); *Cauley* v. *Warren*, 216 F. 2d 74 (7th Cir. 1950); *Francis* v. *Crafts*, 203 F. 2d 809 (1st Cir.), *cert. denied*, 346 U. S. 835 (1953).

C. This Court's decision in *Tenney* v. *Brandhove,* 341 U. S. 367 (1951), has been misapplied by several circuit courts of appeals (whose decisions are cited in the preceding footnote) to support the ruling that judges are immune from suit under 42 U. S. C. §1983.

Congress intended to cover judges but it did not intend to cover legislators. The statute on its face covers those who act under color of law, not those who enact laws.* The principal problem in 1871 was not with legislation but with sham justice.

II.

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING THAT POLICEMEN ARE NOT LIABLE IN DAMAGES FOR DEPRIVING PERSONS OF THEIR CONSTITUTIONAL RIGHTS IF THE PERSONS SO DEPRIVED KNOW THAT THE POLICEMEN MIGHT DISREGARD THEIR CONSTITUTIONAL RIGHTS BUT NEVERTHELESS CHOSE TO EXERCISE THOSE RIGHTS.

A. Under the decision below, the damage remedy of 42 U. S. C. §1983 is unavailable to anyone who chooses to exercise his constitutional rights knowing that exercise of those rights may subject him to illegal treatment by the police.

The evidence "against" petitioners shows nothing more than that by way of a "plan and purpose" to be arrested, petitioners *did* nothing to initiate arrest other than to enter the bus terminal as an integrated group. Their orderly conduct has not been disputed. To say that persons who engage in constitutionally protected conduct and are therefore arrested through the unconstitutional application of a statute, subsequently declared unconstitutional on its face, are evincing a "plan and purpose" to be arrested that frees the policemen who arrested them from liability is absurd.

---

* See that distinction made explicit during the debate on the analogous provisions of Section 2 of the Civil Rights Act of 1866. *Cong. Globe,* 39th Cong., 1st Sess., 4/5/66, p. 1758, col. 1 (Senator Trumbull). The United States Constitution itself mentions a legislative immunity, but no judicial immunity. Article I, Section 6.

If, as the Court below found, the arrests were improper under 42 U. S. C. §1983, surely the police who made the improper arrests should not be immune from responsibility because they happened to arrest persons who intentionally challenged the segregation customs of Mississippi. Quite the contrary. Surely those who act to implement the Constitution—or to dramatize the fact that it is being ignored —are not thereby deprived of the benefit of laws designed to implement the Constitution.

B. The decision below does not, of course, concern petitioners alone. A civil remedy for damages is a device to substitute law for force. To say that those who are at the forefront of the civil rights movement are to be denied the right to obtain damages for deprivation of their civil rights removes one more safety valve from a situation where the rule of law is already endangered. Similarly, to tell policemen that they are free from future personal responsibility for illegally arresting those who knowingly challenge segregation or those who seek to focus attention upon injustice scarcely makes more likely the voluntary observation of the Constitution.

C. Although the decision of the Court below that is under discussion in this section is not technically a final judgment, the impact of that decision upon this case and upon civil rights supporters and policemen generally makes it appropriate that this Court grant certiorari to review this decision as well as the final judgments discussed in the other sections of this petition.

This Court has jurisdiction under 28 U. S. C. §1254(1) to review non-final decisions. See *Larsen* v. *Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 685, n. 3 (1949); *Land* v. *Dollar,* 330 U. S. 731, 734, n. 2 (1947); *United States* v. *General Motors Corp.*, 323 U. S. 373, 377 (1944).

The decision below is fundamental to the future conduct of this case. It is fundamental to the future conduct of policemen. It is fundamental to the present and past rights of scores of others who sought to exercise their constitutional rights in the face of official opposition. It should be reviewed by this Court now.

III.

CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING THAT POLICEMEN ARE NOT LIABLE FOR MAKING ARRESTS WHEN THEY USE A STATUTE THAT SUBSEQUENTLY IS DECLARED UNCONSTITUTIONAL ON ITS FACE AS A SHAM BASIS FOR THE ARREST.

Assuming that the court below was correct in deciding that it is the law in Mississippi (contrary to most jurisdictions) that a police officer is not liable for false arrest when he makes an arrest in reliance upon a statute that is subsequently held unconstitutional, it was nevertheless improper to hold that the state law cause of action against the policeman should be dismissed. There remains a jury question as to whether the arrest was really in reliance upon the statute or whether the police really arrested petitioners because they were an integrated group and used the "breach of the peace statute" as a sham justification for the arrest. In other words, even though the statute had not yet been declared unconstitutional on its face, there remains the issue whether it was knowingly applied unconstitutionally. See *Nesmith* v. *Alford,* 318 F. 2d 110 (5th Cir. 1963).

Petitioner's proof was that there were no threats from others in the waiting room of the bus station. The police testimony itself indicated their aim to preserve racial separation and was weak and conflicting on the issue of whether there was in fact an "ugly" crowd in the waiting room. In any event, the police admitted that they made no effort whatsoever to calm others in the waiting room. And there was no evidence that there was any danger of a breach of the peace in the restaurant which the police prevented the ministers from entering though they could have kept out those who supposedly were hostile to the ministers.

The Mississippi Supreme Court decision in *Golden* v. *Thompson,* 194 Miss. 241, 11 So. 2d 906 (1943), cited by the court below to support its decision that the state law cause of action against the police officer should not be retried in fact requires that the police at least act in "good faith in reliance" on the statute that subsequently is declared invalid. It is for a jury to decide whether the police acted in good faith. See *e.g., Miller* v. *Stimmett,* 257 F. 2d 910 (10th Cir. 1958).

Here again a narrow interpretation, this time of state law, can have widespread effects upon many persons other than the ministers and the policemen involved herein.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Carl Rachlin,
38 Park Row,
New York, New York.

Melvin Wulf,
156 Fifth Avenue,
New York, N. Y.

Counsel for Petitioners.

Of Counsel:

Frederick A. O. Schwartz, Jr.,
Leonard H. Rosenthal,
Stephen M. Nagler,

February 21, 1966.

Appendix "A"

IN THE

United States Court of Appeals

For the Fifth Circuit

No. 21325

Robert L. Pierson, *et al.*,
Appellants,
versus
J. L. Ray, *et al.*,
Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

(October 25, 1965.)

Before JONES and BELL, Circuit Judges, and HUNTER, District Judge.

JONES, Circuit Judge: The appellants brought an action against the appellees alleging a common-law tort claim for false imprisonment and a statutory[1] claim for damages for a deprivation of civil rights. The appellants were clergymen. One of them is a Negro. The appellees Ray, Griffith and Nichols were police officers of the City of Jackson, Mississippi. The appellee Spencer was the Police Justice and Ex-Officio Justice of the Peace, Hinds County, Mississippi.

---

[1] Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U. S. C. A. §1983.

Fifteen clergymen in clerical attire, including the appellants, were participants in a so-called prayer pilgrimage. Most of the twenty-six who were accepted for the pilgrimage resided in Northern states. The pilgrimage was to start at New Orleans and go on to Dearborn, Michigan. A bus was chartered from New Orleans to Jackson, but not beyond. At Jackson the fifteen clergymen went by taxicab to the Continental Bus Terminal. They had bus tickets for transportation to Chattanooga, Tennessee. They arrived at the bus terminal in Jackson about 11:20 o'clock in the forenoon of September 13, 1961. The Chattanooga bus was scheduled to depart shortly after noon.

The prayer pilgrimage had been well publicized in advance. The appellees Griffith and Nichols had been sent to the bus station. Upon or soon after their arrival the fifteen clergymen started toward the coffee shop. They were stopped by the two officers and remained in the passageway leading to the coffee shop. The officers directed or ordered them to "move on." The clergy stayed at the place where they were halted. One of the officers telephoned the police station and soon after the appellee Ray arrived. He was then a captain of police. At the time of the trial of the cause in the district court he was deputy chief of police. When the group arrived there were fifteen to twenty people in the bus station. Twenty-five to thirty people, all of whom were white, followed them in. There was testimony that the people in the station were "mumbling in a very ugly mood," that they were "disturbed," that they were "in a turmoil," and that quite a disturbance was caused. The group of prayer pilgrims were completely orderly. Captain Ray told the clergy to "move along" and upon their failure and refusal to do so, they were arrested and taken to jail. An affidavit was filed by Captain Ray charging them with disorderly conduct under a Mississippi statute.[2] The appellants were tried on September 15, 1961, before the appellee, Judge Spencer, and found guilty. Each of the appellants was sentenced to four months in jail and fined two hundred dollars. Appellants Breeden, Morris, and Pierson were released on bond on September 19, and the appellant Jones was released on bond on September 29, 1965. Bond was available to all of the appellants and it was by their choice that they remained in jail rather than being sooner released on bond. The appellants took an appeal to the County Court of the First Judicial Court of Hinds County, where the appeal was by way of a de novo trial. The case of the appellant Jones was first heard by the County Judge, who found him not guilty. The prosecution then moved that the charges against the other appellants be nolle prosequied, and the motion was granted. The appellants brought this action, each claiming $11,001 damages. The cause was tried before a jury which returned a verdict

---

[2] 1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in . . . any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, . . . or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person. . . . shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; . . . Miss. Code 1942 Recompiled §2087.5.

Fifteen clergymen in clerical attire, including the appellants, were participants in a so-called prayer pilgrimage. Most of the twenty-six who were accepted for the pilgrimage resided in Northern states. The pilgrimage was to start at New Orleans and go on to Dearborn, Michigan. A bus was chartered from New Orleans to Jackson, but not beyond. At Jackson the fifteen clergymen went by taxicab to the Continental Bus Terminal. They had bus tickets for transportation to Chattanooga, Tennessee. They arrived at the bus terminal in Jackson about 11:20 o'clock in the forenoon of September 13, 1961. The Chattanooga bus was scheduled to depart shortly after noon.

The prayer pilgrimage had been well publicized in advance. The appellees Griffith and Nichols had been sent to the bus station. Upon or soon after their arrival the fifteen clergymen started toward the coffee shop. They were stopped by the two officers and remained in the passageway leading to the coffee shop. The officers directed or ordered them to "move on." The clergy stayed at the place where they were halted. One of the officers telephoned the police station and soon after the appellee Ray arrived. He was then a captain of police. At the time of the trial of the cause in the district court he was deputy chief of police. When the group arrived there were fifteen to twenty people in the bus station. Twenty-five to thirty people, all of whom were white, followed them in. There was testimony that the people in the station were "mumbling in a very ugly mood," that they were "disturbed," that they were "in a turmoil," and that quite a disturbance was caused. The group of prayer pilgrims were completely orderly. Captain Ray told the clergy to "move along" and upon their failure and refusal to do so, they were arrested and taken to jail. An affidavit was filed by Captain Ray charging them with disorderly conduct under a Mississippi statute.[2] The appellants were tried on September 15, 1961, before the appellee, Judge Spencer, and found guilty. Each of the appellants was sentenced to four months in jail and fined two hundred dollars. Appellants Breeden, Morris, and Pierson were released on bond on September 19, and the appellant Jones was released on bond on September 29, 1965. Bond was available to all of the appellants and it was by their choice that they remained in jail rather than being sooner released on bond. The appellants took an appeal to the County Court of the First Judicial Court of Hinds County, where the appeal was by way of a de novo trial. The case of the appellant Jones was first heard by the County Judge, who found him not guilty. The prosecution then moved that the charges against the other appellants be nolle prosequied, and the motion was granted. The appellants brought this action, each claiming $11,001 damages. The cause was tried before a jury which returned a verdict for the appellees. A judgment was entered on the verdict from which this appeal has been taken.

---

[2] 1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in . . . any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, . . . or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person. . . . shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; . . . Miss. Code 1942 Recompiled §2087.5.

In a pre-trial deposition of the appellee Spencer, he was asked whether a citizen has a right to disobey an unreasonable or improper order of a police officer, as in a case in which it was clear that the order of the policeman to move on was improper. He was asked to answer the question as a judge. His answer was that he thought the citizen should obey the officer and later seek redress. The appellants were not permitted to question the appellee Spencer as to this opinion when he was called as an adverse witness at the trial. The appellants contend that the ruling was erroneous. The refusal of the district court to permit the question was not error. Both at the taking of the deposition and at the trial the questions were propounded to the witness in his capacity as a judge. Whether or not a judicial opinion is erroneous is not a question to be resolved by a jury. A judge's function is to decide cases, but not to answer academic or hypothetical questions.

The appellee Spencer filed a motion to dismiss the complaint as to him on the ground that his actions were judicial and he was immune from any civil liability. The motion was deferred for decision until the trial of the case on the merits. No ruling on the motion was made. The judgment for the appellants made the question unimportant, but we think it is appropriate to say that the motion should have been granted. By the leading case of *Bradley* v. *Fisher,* 13 Wall. 335, 20 L. Ed. 646, the immunity was established of judges of courts of superior or general jurisdiction from liability for damages growing out of the performance of their judicial duties. The doctrine has been extended to the judges of all courts. *Barr* v. *Matteo,* 360 U. S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434; *Yaselli* v. *Goff,* 2nd Cir. 1926, 12 F. 2d 396, aff. 275

U. S. 503, 48 S. Ct. 155, 72 L. Ed. 395. The rule applies to city magistrates and municipal judges. *Cuiksa* v. *City of Mansfield,* 6th Cir. 1957, 250 F. 2d 700, cert. den. 356 U. S. 937, 78 S. Ct. 779, 2 L. Ed. 2d 813; *Reilly* v. *United States Fidelity & Guaranty Co.,* 9th Cir. 1926, 15 F. 2d 314; 35 C. J. S. 707, False Imprisonment §44. Such is the law in Mississippi. *Bell* v. *McKinney,* 63 Miss. 187. The judicial immunity applies in civil rights actions as well as at common law. *Norton* v. *McShane,* 5th Cir. 1964, 332 F. 2d 855, cert. den. 380 U. S. 981, . . . S. Ct. . . ., 14 L. Ed. 2d 274 If a judicial officer acts in the clear absence of all jurisdiction and authority he incurs liability for a false imprisonment caused by him 35 C. J. S. 707, False Imprisonment §44. The Mississippi statute, Sec. 2087.5, on its face, was sufficient to justify the action taken by Judge Spencer. The statute had not then been held invalid. It was subsequently upheld by the Supreme Court of Mississippi in *Thomas* v. *State,* 160 So. 2d 657, *Farmer* v. *State,* 161 So. 2d 159, and *Knight* v. *State,* 161 So. 2d 521. We think it cannot be said that there was a clear absence of jurisdiction in the appellee Spencer at the time action was taken by him although, since this cause was argued before us, the statute was held invalid as applied to circumstances such as those in this case. *Thomas* v. *Mississippi,* 380 U. S. 524, 85 S. Ct. 1327, 14 L. Ed. 2d 265. See *Boynton* v. *Virginia,* 364 U. S. 454, 81 S. Ct. 182, 5 L. Ed. 2d 206. A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess. We think it was proper to defer a ruling on the motion of the appellant Spencer but it should have been granted when the evidence was in.

The doctrine of immunity which has long prevailed with respect to judicial officers, has been extended to other officers of government whose duties are related to the judicial process. *Barr* v. *Matteo,* 360 U. S. 564, 79 S. Ct.

1335, 3 L. Ed. 2d 1434, *Norton* v. *McShane,* 5th Cir. 1964, 332 F. 2d 855, cert. den. 380 U. S. 981, . . . S. Ct. . ., 14 L. Ed. 2d 274,[3] *Gregoire* v. *Biddle,* 2nd Cir. 1949, 177 F. 2d 579, cert. den. 339 U. S. 949, 70 S. Ct. 803, 94 L. Ed. 1363. In this cause, as in *Norton* v. *McShane, supra,* the doctrine of official immunity protects the police officers from common-law false-imprisonment liability. The rule may be otherwise where a claim is asserted under a Civil Rights Act. In *Norton* v. *McShane,*[4] *supra,* it was said:

> "While it is clear that the common-law immunity afforded legislative and judicial officers applies in suits under the Civil Rights Acts, there remains much uncertainty as to the extent to which immunity for subordinate executive officials applies, if it applies at all." 332 F. 2d 855, 860-861.

The uncertainty then existing still prevails. 15 Am. Jur. 2d 452 et seq., Civil Rights §67. It might seem to be an anomaly of the law that in the case of a Federal police officer acting in Mississippi, an extremely aggravated wrong must remain unredressed because of public policy, as was held in *Norton* v. *McShane, supra;* while in the case before us, municipal police officers, acting in Mississippi, may be required to answer in damages for acting in good faith under a state statute which they were entitled to presume to be valid. Yet such appears to be the law which controls our decision on this issue in this appeal.

By dictum in *Hoffman* v. *Halden,* 9th Cir. 1959, 268 F. 2d 280, it was indicated that by the Civil Rights Act liability was imposed on state officers for acts within as well as without the scope of their authority if done under color of law. In *Monroe* v. *Pape,* 365 U. S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492, it was held that under 42 U. S. C. A. §1983 a cause of action may be asserted against a state police officer acting under color of state law for deprivation of a Fourteenth Amendment Constitutional right whether or not done wilfully. See *Cohen* v. *Norris,* 9th Cir. 1962, 300 F. 2d. *Cf. Davis* v. *Turner,* 5th Cir. 1952, 197 F. 2d 847. Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses. *Monroe* v. *Pape* did not expressly rule upon the question of immunity but the result necessarily implies rejection of such a defense as a general proposition. *Cohen* v. *Norris, supra.* The defense of immunity is not available to the police officer appellees in this cause.

---

[3] In Norton v. McShane a claim was asserted against Federal marshals. For Erie-Tompkins purposes it was a Mississippi case.

[4] It may be noted that Norton v. McShane was decided more than a year after Nesmith v. Alford. The writer of the Norton opinion was one of the judges of the panel that decided Nesmith.

While one of the appellants was on the stand as a witness for himself and the other appellants, he was shown a copy of the Daily Worker, setting out nine demands of the Communist party with respect to racial discrimination, and asked if he agreed with the demands. The witness was required to answer over objection. His answer was, as to all but one, that he agreed and as to it he was undecided. The appellants then moved for a mistrial. The motion was denied. The interrogation of the witness as to his beliefs regarding racial segregation and the like seem wholly irrelevant to any of the issues of the case. It might be urged with plausibility that the error in permitting the questions to be asked and requiring them to be answered was not prejudicial. We cannot agree. The permitting of the use of the Communist party organ, the Daily Worker, as the source of the inquiries could not be other than prejudicial error.

The trial court permitted one of the appellants and their witnesses to be questioned regarding racial strife in the City of Jackson occurring in connection with the visitation of Freedom Riders, so called, some time prior to the episode from which this action arose. Appropriate objections were made and overruled. No conenction was shown between the Freedom Riders and the Prayer Pilgrims, and the appellants denied any connection. It was not shown that the earlier incidents were sufficiently close in point of time to have any relation to the situation with which we are dealing. It was error not to have sustained the objections.

The appellants here complain of a charge[5] given by the district court with respect to the Mississippi statute. No specific objection was made to the charge nor grounds of objection assigned.[6] It may be observed, in connection with the instruction, that at the time of the trial the Mississippi statute, Section 2087.5, had not been held invalid. The instruction, in the form given, would not now be proper.

---

[5] The law of Mississippi is this—and I instruct you that Section 2087.5 of the Mississippi Code of 1942 Recompiled and as amended provides that whoever congregates with others in a public place or in any place of business engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby and who fail or refuse to disburse and move on when ordered so to do by any law enforcement officer of any municipality shall be guilty of a misdemeanor; and if you believe from the preponderance of the evidence in this case that on September 13, 1961, the plaintiffs congregated with others at the Trailways bus station in Jackson, Mississippi, under such circumstances that a breach of the peace may have been occasioned thereby, and that the plaintiffs failed or refused to disburse or to move on when ordered so to do by the police officers of the City of Jackson, Mississippi, then it would be your duty to return a verdict for the defendants in the case.

That is, you might say, the crux of the law, but, of course, everything I say to you is a part of the law, and all of the instructions will be taken together; but if a bunch of folks congregate with others engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby, and fail or refuse to disburse when ordered so to do by a law enforcement officer, he is guilty of a misdemeanor, and the officers under those circumstances would have the right to arrest him.

It is not contemplated by that law that any violence would be done to any particular person, but if a bunch of people gather at a public place under such circumstances as then existed that a breach of the peace may occur unless the officers have a right to tell them to move on, and if they refuse to do so, then, of course, they would be guilty of the crime, and the officers would have the right to arrest them.

The appellants complain of the trial court's instruction[7] on probable cause, and an objection to it was made and preserved. If the trial court had been correct in its assumption that Section 2087.5 was a valid statute defining a misdemeanor, then the instruction would have been proper. A police officer is permitted to arrest, without a warrant, for misdemeanors committed in his presence. Is he to be required in order to be free from liability for damages, to have his action vindicated by a judgment of conviction, an affirmance on appeal, and a Supreme Court determination of the validity of the statute under which he has acted? The authorities are not uniform as to whether a public officer can be held civilly liable for acting under the authority of a statute subsequently held invalid. *Miller* v. *Stinnett,* 10th Cir. 1958, 257 F. 2d 910. The rule followed in Mississippi, which may be the minority rule but which is controlling here, is that a public officer is not charged with the duty of determining at his peril whether a statute is valid when he is acting under it. *Golden* v. *Thompson,* 194 Miss. 241, 11 So. 2d 206.

---

[6] A general objection, which counsel attempted to interpose because of his fear that his memory had failed him, is unavailing. Fed. Rules Civ. Proc. 51, 28 U. S. C. A.

[7] I further instruct you that if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Griffith and Nichols said defendants had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested, it is your duty to return a verdict for the defendants.

Thus the challenged instruction was not improper when given although if it should be requested now, since the statute has been declared invalid, it would be couched in different terms; although the conduct of the appellees would be tested by the situation existing at the time of their action.

The appellant Morris was the executive director of the society which organized and supervised the prayer pilgrimage. The court admitted in evidence, over timely objections, his letters and memoranda used in organizing and planning the pilgrimage. From these exhibits and from the testimony of the appellant Morris it could have been inferred that one of the purposes, perhaps the prime purpose, of the pilgrimage was to have at least ten of the group jailed in Jackson. The length of time for remaining in jail was discussed. Arrangements in advance for bail bonds and for counsel had been made, or so it could have been found. In one of the communications it was said:

> "All in all, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for us when he said, 'About jail—Here I am, send me. I'm not brave but I'm obedient.' "

The evidence would have permitted a finding, not only that being jailed in Jackson was a possibility, but that the participants would go to Jackson for the purpose of procuring their jailing and would so conduct themselves as to insure the achievement of that result. We do not say that this evidence required such a finding; we say that it permitted it. If the appellants' claims can be defeated by a showing of a plan and purpose of being arrested and jailed, then the evidence was properly admitted. We think that such a showing would preclude recovery and the question is presented by the appellants' specification of error next considered.

The remaining assignment of error is the denial by the trial court of the appellants' motion for a directed verdict on the issue of liability, leaving only the question of damages to the jury. In urging this point, the appellants rely upon *Nesmith* v. *Alford,* 5th Cir. 1963, 318 F. 2d 110, cert. den. 375 U. S. 975, 84 S. Ct. 489, 11 L. Ed. 2d 420. In *Nesmith* the plaintiffs had been arrested and placed in jail. They sued police officers for malicious persecution, false imprisonment, and deprivation of civil rights. This court held that the plaintiffs, Nesmith and his wife, were entitled to a directed verdict as a matter of law as to liability on the common-law claim for false imprisonment and, as we read the court's opinion, on the civil rights claim. The false-imprisonment common-law claim is a state cause of action. The *Nesmith* case was decided under the law of Alabama. This case arises under the law of Mississippi. It is our considered view that under the law of Mississippi the appellants were not entitled to a directed verdict of liability on the false-imprisonment claim. As we have pointed out, there was evidence from which it might have been found that the appellants went to Jackson, not only contemplating the possibility of being jailed, but with a design and plan that they should be. If they had such a design and plan, are they entitled to recover damages for having accomplished their objective?

The question is not whether the appellants could lawfully dramatize their protests against racial inequality by attempting to eat in a wrongfully segregated lunch room in a bus terminal of an interstate passenger carrier. It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program a planned arrest and confinement and the successfully rely upon such confinement as the basis for recovery in an action for damages for false imprisonment. Throughout the common law of torts the maxim, volenti non fit injuria, is applicable. It is applicable to false imprisonment. 35 C. J. S. 712, False Imprisonment §46 c. One who has invited or consented to arrest and imprisonment should be denied recovery. *Hulberstadt* v. *Nelson*, 34 Misc. 2d 472, 226 N. Y. S. 2d 100; *Greene* v. *Fankhauser*, 137 App. Div. 124, 121 N. Y. S. 1004; *Stork* v. *Evert*, 47 Ohio App. 256, 191 N. E. 794. The principles set forth in the recent case of *State* v. *Moore*, . . . Miss. . . ., 174 So. 2d 352, show a recognition of the rule as applicable in Mississippi, although under a factual situation different from the case before us. An earlier decision, and one more nearly in point on its facts, is *Williamson* v. *Wilcox*, 63 Miss. 335, where it was said, "For a purely private injury one cannot maintain a suit when he has consented to the act which produced the injury." Whatever the law may be in some jurisdictions,[8] we conclude that, under the law of Mississippi, to which we look for the governing common-law rules of law,[9] proof that the plaintiffs invited or consented to arrest and confinement precludes recovery for false imprisonment. Since, as is said in *Monroe* v. *Pape, supra*, "Section 1979 [42 U. S. C. A. §1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." We think the tort principle of volenti non fit injuria applies to the claim asserted for a civil rights violation under 42 U. S. C. A. §1983 as well as to the common-law cause of action. For reasons elsewhere discussed in this opinion, we hold that the appellees are immune from liability for false imprisonment at common law but not from liability for violations of the Federal statutes on civil rights. It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment.

---

[8] As in Alabama. See Nesmith v. Alford, 5th Cir. 1963, 318 F. 2d 110.

[9] Questions as to liability under Civil Rights Acts are Federal questions to be determined by Federal Law. Nesmith v. Alford, supra, n. 8; 15 Am. Jur. 2d 453, Civil Rights §67.

The judgment of the district court will be reversed and remanded so that the complaint and the action may be dismissed as to the appellee Spencer, and a new trial had as to the other appellees in accordance with this opinion.

REVERSED AND REMANDED.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No.

ROBERT L. PIERSON, ET AL., *Petitioners,*

vs.

J. L. RAY, ET AL., *Respondents.*

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND ALTERNATIVE CROSS-PETITION.

THOMAS H. WATKINS,
Suite 800 Bankers Trust Plaza Building,
Jackson, Mississippi.

Of Counsel:
WATKINS & EAGER

INDEX

Page

Petitioners Rely on Insufficient Reasons for Granting the Writ 2

I. Certiorari should not be granted to review the holding of the Court of Appeals that a police justice is immune from liability for damages under 42 U.S.C. 1983 for error of judgment or error in the determination of the validity of or applicability of a criminal statute 3

II. Certiorari should not be granted to review the holding that policemen are not liable in damages to persons who deliberately planned to be arrested and confined and provoked the arrest 7

III. Certiorari should not be granted to review the holding that under the facts here and after the finding of the jury here that Respondents were immune from liability for false imprisonment at common law under the Mississippi rule 9

If Certiorari Is Granted, Then the Court Should Review the Vague and Indefinite Language of the Opinion of the Court Below and the Possible Interpretation Thereof as Limiting the Defense of Police Officers in Actions Under 28 U.S.C. 1983 Solely to Whether or Not Petitioners Invited or Consented to the Arrests and Imprisonment for Which They Seek Damages 11

Conclusion 16

Certificate of Service 17

Appendix A 18

Appendix B 20

CITATIONS

Cases:

Page

Arnold v. *Bostick*, C.A. 9, 339 F. 2d 879 7
Bailey v. *Patterson*, 323 F. 2d 201, certiorari denied 376 U.S. 910, 11 L.ed.2d 609 5
Boynton v. *Virginia*, 364 U.S. 454, 5 L.ed.2d 206 .... 4, 10
Brown v. *Board*, 98 L.ed. 873, 347 U.S. 483 6
Carr v. *National Discount*, C.A. 6, 172 F. 2d 899, certiorari denied 94 L.ed. 495 14
Campo v. *Niemeyer*, C.A. 7, 182 F. 2d 115 7
Cawley v. *Warren*, C.A. 7, 216 F. 2d 74 7
Chicot County Drainage District v. *Baxter State Bank*, 84 L.ed. 329, 308 U.S. 371 15
Cohen v. *Norris*, C.A. 9, 300 F. 2d 24 12
Crumady v. *"Joachim Hendrik Fisser"*, 3 L.ed.2d 413, 358 U.S. 423 5
Cudahy Packing Co. v. *Harrison*, 18 F. Supp. 250 15
Edwards v. *South Carolina*, 372 U.S. 229 4
Elias v. *New Laurel Radio Station, Inc.*, 146 So. 2d 558 8
Forsythe v. *Ivey*, 139 So. 615 9
Francis v. *Crafts*, C.A. 1, 203 F. 2d 809, certiorari denied 98 L.ed. 357, 346 U.S. 835 9
General Talk. Pictures Corp. v. *Western El. Co.*, 82 L.ed. 1273, 304 U.S. 175 5
Golden v. *Thompson*, 11 So. 2d 906 10
Haldane v. *Chagnon*, C.A. 9, 345 F. 2d 601 7
Harmon v. *Superior Court of State of California*, C.A. 9, 329 F. 2d 154 7
Hoffman v. *Halden*, C.A. 9, 268 F. 2d 280 15
Howell v. *Viener*, 176 So. 731 9
Hurlburt v. *Graham*, C.A. 6, 323 F. 2d 723 (1963) 14
Joyce v. *Ferrazzi*, C.A. 1, 323 F. 2d 931 (1963) 14
Kenney v. *Fox*, C.A. 6, 232 F. 2d 288 7
King v. Weaver, 127 So. 718 9
Lenaz v. *Conway*, 105 So. 2d 762 9
McShane v. *Moldovan*, C.A. 6, 172 F. 2d 1016 6
Miller v. *Stinnett*, C.A. 10, 257 F. 2d 910 10
Monroe v. *Pape*, 365 U.S. 167, 5 L.ed.2d 492 .... 8, 13, 14

Page

Nesmith v. *Alford*, C.A. 5, 318 F. 2d 110, certiorari denied 375 U.S. 975, 11 L.ed.2d 420 ... 9
Phipps v. *School Dist. of Pittsburgh*, C.A. 3, 111 F. 2d 393 ... 15
Picking v. *Pa. R. Co.*, C.A. 3, 151 F. 2d 240 ... 6
Pritchard v. *Downie*, C.A. 8, 326 F. 2d 323 (1964) ... 14
Ravenscroft v. *Casey*, C.A. 2, 139 F. 2d 776, certiorari denied 89 L.ed. 596, 323 U.S. 745 ... 14
Ray v. *Huddleston*, C.A. 6, 327 F. 2d 61 ... 6
Ray v. *Huddleston*, 212 F. Supp. 343 ... 6
Rhodes v. *Meyer*, C.A. 8, 334 F. 2d 709, certiorari denied 13 L.ed.2d 186, 379 U.S. 915 ... 6-7
Sarelas v. *Sheehan*, C.A. 7, 326 F. 2d 490, certiorari denied 12 L.ed.2d 296, 377 U.S. 932 ... 7
Saxton v. *Rose*, 29 So. 2d 646 ... 8
Sires v. *Cole*, C.A. 9, 320 F. 2d 877 ... 7
Smith v. *Dougherty*, C.A. 7, 286 F. 2d 777 (1961), certiorari denied 7 L.ed.2d 97, 368 U.S. 903 ... 14
Southern Power Co. v. *North Carolina Public Serv. Co.*, 68 L.ed. 413, 263 U.S. 508 ... 5
State v. *Broom*, 58 So. 2d 32 ... 9
Striker v. *Pancher*, C.A. 6, 317 F. 2d 780 (1963) ... 14, 15
Tenney v. *Brandhove*, 95 L.ed. 1019, 341 U.S. 367 ... 6
Thomas v. *Chamberlain*, 143 F. Supp. 671, affirmed 236 F. 2d 417, C.A. 6 ... 15
Thomas v. *State*, Miss., 160 So. 2d 657 ... 10
Thomas v. *State*, 160 So. 2d 657 ... 4
Whittington v. *Johnston*, C.A. 5, 201 F. 2d 810 ... 15

Statutes:

86 C.J.S., Torts, Section 12 ... 8
86 C.J.S., Torts, 990-1 ... 8
28 U.S.C.A. 1983 ... 8, 12, 14
42 U.S.C.A. 1983 ... 2, 5, 8, 11
Rule 19 ... 1, 16
Section 1979 (18 U.S.C. 1983) ... 13
35 C.J.S., False Imprisonment, Section 25 ... 13

Miscellaneous: Page

United States Court of Appeals for the Fifth Circuit 1, 2, 3, 8

Mississippi 1942 Code

Section 2087.5 .... 4, 5, 18
Section 2470 .... 10, 20
Section 2474 .... 10, 20

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No.

ROBERT L. PIERSON, ET AL., *Petitioners,*

vs.

J. L. RAY, ET AL., *Respondents.*

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND ALTERNATIVE CROSS-PETITION.

Respondents Ray, Griffith and Nichols, all policemen of the City of Jackson, Mississippi, and Respondent Spencer, Municipal Justice of said City, oppose the issuance of a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit on the grounds that:

(1) No reasons for granting the writ of the character specified in Rule 19 of this Court are submitted.

(2) The judgment of the Court of Appeals is not a final judgment but is a judgment reversing a jury verdict for Respondents and remanding the case for a new trial as to Respondents who are police officers. While this Court has jurisdiction to issue the writ, the petition does not involve a substantial issue fundamental to the further conduct of this case.

But, if mistaken in this, and if certiorari is to be granted, then Respondents who are police officers of the City of Jackson make this a Cross-Petition for Certiorari so that if the writ issues and this Court reviews the judgment of the Circuit Court of Appeals for the Fifth Circuit, this Court will review the apparent holding of that Court that:

> Respondents who are police officers sued for damages under 42 U.S.C., Section 1983, cannot defend on other and additional grounds beyond the ground that Petitioners invited or consented to the arrest and imprisonment, i.e., that Respondents can defend on the ground of good faith in enforcing the State Statute on probable cause and the ground that Respondents did not make the arrests because Petitioners were an integrated group or use the statute as a sham justification for the arrest or knowingly apply an unconstitutional statute or apply it unconstitutionally.

In support of said alternative Cross-Petition the Respondents adopt all of the allegations of Petitioners as to the jurisdiction of this Court, the statute involved, the actual proceedings of the Court below, the copy of the opinion thereto attached as Appendix A and the reference to the official report thereof.

Petitioners Rely on Insufficient Reasons for Granting the Writ

Petitioners here assign no grounds for or reasons for granting the Writ of Certiorari of the character that this Court considers special, important and sufficient, i.e., the decision of the Court of Appeals of the Fifth Circuit is not in conflict with the decision of other Courts of Appeal on the same matter. In so far as the holdings relied on by Petitioners to justify review are concerned: The Court of

Appeals of the Fifth Circuit has not decided an important state question in conflict with the applicable state law; has not decided an important question of federal law which has not been but should be settled by this Court; has not decided a federal question in a way in conflict with the applicable decisions of this Court; and has not so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

I. *Certiorari should not be granted to review the holding of the Court of Appeals that a police justice is immune from liability for damages under 42 U.S.C. 1983 for error of judgment or error in the determination of the validity of or applicability of a criminal statute.*[1]

Admittedly here the police court of the City had jurisdiction and there was no denial of due process by the judge. After arrest the Petitioners were regularly processed. Affidavits were filed in the City Police Court by the Chief of Police of the City of Jackson to the effect that Petitioners had congregated with others in or around the Continental Bus Terminal ". . . a place of business engaged in selling or serving members of the public . . . under such circumstances that a breach of the peace might have been occasioned thereby" and that they did then and there "wilfully and unlawfully fail and refuse to disperse and move on when ordered to do so" by a law enforcement officer. (R. 110-11) They had been arrested at noon on September 13th, 1961, and were duly tried in the Police Court under Respondent Judge Spencer on the 15th. They were represented by counsel, including both a local attorney and the chief legal adviser for CORE. The unconstitutionality of the statute under which they were arrested was not raised. No jury trial was requested by Petitioners. *None of the Petitioners testified in their own behalf.* (R. 419, 151-2, 615) Petitioners were convicted by Judge Spencer of violation of Section 2087.5, *Mississippi 1942 Code,* copy of which is attached hereto as Appendix A, which made it a misdemeanor to congregate in any public place of business and refuse to move on on order of the police either with intent to provoke a breach of the peace or "under circumstances such *that a breach of the peace may be occasioned thereby.*"[2]

---

[1] The Petition misstates the holding of the Court below in asking this Court to review "The holding that a police justice who acts . . . *knowingly* to deprive persons of rights secured by the Constitution . . . is immune from liability . . ." (p. 12) The Court of Appeals did not so hold but limited the immunity of judges to liability in this case to an error of judgment or error of law stating: "A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess."

The preceding May Judge Spencer had convicted a Negro, Thomas, of the same offense. There had been a trial de novo in the County Court and he had been found guilty and, apparently, at about this time he had appealed to the Circuit Court. Later in 1964 the conviction was affirmed by the Supreme Court of Mississippi and the statute specifically held valid and constitutional. *Thomas* v. *State,* 160 So. 2d 657. The Supreme Court of the United States reversed the criminal conviction by per curiam opinion in April, 1965, 380 U.S. 524, 14 L.ed.2d 265, solely on *Boynton* v. *Virginia,* 364 U.S. 454, 5 L.ed.2d 206, i.e., solely on the ground that the statute *as applied* to a Negro in a restaurant in a terminal was contrary to the Interstate Commerce Statutes if the order of the police to leave was solely on account of race, i.e., on the application of the tute in the particular case. The statute was not held unconstitutional on its face.

---

[2] The statute was thus unlike that involved in *Edwards* v. *South Carolina,* 372 U.S. 229, decided, however, long after this decision by Judge Spencer.

It was not until September, 1963, that Jackson municipal authorities were enjoined from enforcing certain other Mississippi statutes *requiring* segregation of facilities of interstate commerce (not in Section 2087.5). *Bailey* v. *Patterson*, 323 F. 2d 201, certiorari denied 376 U.S. 910, 11 L.ed.2d 609.

This Court is well aware of the changes in legal decisions since 1961 and the vast number of lower courts reversed during that period.

Any issue as to whether or not Judge Spencer acted "knowingly to deprive persons of rights secured by the Constitution", as the issue here is incorrectly stated by Petitioners, has been finally determined. It was submitted to the jury under proper instructions (R. 632) and decided in his favor. The Court of Appeals merely reviewed the evidence and held that actually the District Court should have dismissed as to Spencer because there was no evidence to sustain a finding of such wilfulness or intent and that as a judge, having jurisdiction of the case, he was immune from liability in damages for an error of judgment. The case was thus remanded with an order to dismiss as to Spencer.

By so stating this issue here Petitioners seek to have this Court review a factual issue of consequence only in this particular litigation which this Court will not do. *Southern Power Co.* v. *North Carolina Public Serv. Co.*, 68 L.ed. 413, 263 U.S. 508; *General Talk. Pictures Corp.* v. *Western El. Co.*, 82 L.ed. 1273, 304 U.S. 175. Cf. dissent of Mr. Justice Harlan, Frankfurter and Whittaker in *Crumady* v. *"Joachim Hendrik Fisser"*, 3 L.ed.2d 413, 358 U.S. 423.

Petitioners cite only one case involving immunity of judges in Civil Rights actions under *42 U.S.C.* 1983, i.e., *Picking* v. *Pa. R. Co.*, C.A. 3, 151 F. 2d 240.[3] There the charge against the justice of the peace was that "... he denied and refused a hearing to the plaintiffs upon their arrest ... (and thereby) ... may have deprived the plaintiffs of their liberty *without due process of law* ..." Moreover, the holding there that an action under Section 1983 could be maintained in spite of the common law judicial immunity of the justice of the peace was based on the construction of the statutory provision that "*Every person who* ... subjects or causes to be subjected any citizen ... to the deprivation of any rights ..." was broad enough to include a judge. However, such construction would also necessarily require that it be broad enough to include state legislators who by enacting unconstitutional statutes could "*cause*" persons to be subjected to a deprivation of constitutional rights. This interpretation, however, was repudiated by this Court in *Tenney* v. *Brandhove,* 95 L.ed. 1019, 341 U.S. 367, holding that the Civil Rights statutes did not overturn the traditional common law immunity of legislators.[4]

Since *Tenney* there have been no decisions of any Circuit Court of Appeals in conflict with the holding of the Circuit Court of Appeals below that the Civil Rights Act creates no exception to the common law rule of judicial immunity from civil action for damages arising out of judicial acts. Cases in accord with the decision of the Court of Appeals below, where frequently certiorari has been denied by this Court, include: *Ray* v. *Huddleston,* C.A. 6, 327 F. 2d 61, adopting the opinion in *Ray* v. *Huddleston,* 212 F. Supp. 343; *Rhodes* v. *Meyer,* C.A. 8, 334 F. 2d 709, certiorari denied 13 L.ed.2d 186, 379 U.S. 915; *Sires* v. *Cole*, C.A. 9, 320 F. 2d 877; *Haldane* v. *Chagnon*, C.A. 9, 345 F. 2d 601; *Arnold* v. *Bostick*, C.A. 9, 339 F. 2d 879; *Harmon* v. *Superior Court of State of California*, C.A. 9, 329 F. 2d 154; *Sarelas* v. *Sheehan*, C.A. 7, 326 F. 2d 490, certiorari denied 12 L.ed.2d 296, 377 U.S. 932; *Campo* v. *Niemeyer*, C.A. 7, 182 F. 2d 115; *Cawley* v. *Warren*, C.A. 7, 216 F. 2d 74; *Francis* v. *Crafts*, C.A. 1, 203 F. 2d 809, certiorari denied 98 L.ed. 357, 346 U.S. 835; *Kenney* v. *Fox*, C.A. 6, 232 F. 2d 288.

---

[3] Judicial immunity was not considered in *McShane* v. *Moldovan,* C.A. 6, 172 F. 2d 1016.

[4] This case also repudiated the argument of *Picking* based on legislative debate in 1871 during the enactment of the statute. In *Tenney* it was said: "The limits of §§ 1 and 2 of the 1871 statute ... were not spelled out in debate." Cf. *Brown* v. *Board,* 98 L.ed. 873, 347 U.S. 483, on the inadequacy of legislative history to resolve Civil Rights issues today.

II. *Certiorari should not be granted to review the holding that policemen are not liable in damages to persons who deliberately planned to be arrested and confined and provoked the arrest.*

Again petitioners have erroneously stated what the holding of the lower Court was. The Court below did not hold, as alleged by Petitioners, that policemen would not be liable in damages for a wrongful arrest merely because the person arrested performed a constitutional act knowing that the policeman might wrongfully arrest him. On the other hand the Court stated: "The question is not whether the appellants could lawfully dramatize their protests against racial inequality by attempting to eat in a wrongfully segregated lunchroom . . . It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program *a planned arrest and confinement* and then successfully rely upon such confinement *as the basis for recovery in an action for damages for false imprisonment.*"

Petitioners have confused acts done *for the purpose of exercising a constitutional right* where there could be arrest with *acts done for the deliberate purpose of being arrested.* The organization sponsoring Petitioners condones such acts, but usually recognizes that persons deliberately engaged in actual civil disobedience to dramatize their rights must accept the legal consequences of their act. No one should condone such acts where they were for the purpose of or made use of to collect a money judgment for the very arrest and imprisonment they deliberately caused.

The Court below cited authorities to support its position under the tort principle of volenti non fit injuria (*86 C.J.S.*, Torts, Section 12). It is also closely akin to Assumption of Risk. *86 C.J.S.*, Torts, 990-1. I.e., Assent by submitting voluntarily to known dangers with a realization of the risk resulting in an inability to base a tort action on harms produced by the assumed danger.[5]

Actions for damages under *28 U.S.C.A.* 1983 must be tried on the basis of common law tort liability, i.e., ". . . should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe* v. *Pape*, 365 U.S. 167, 5 L.ed.2d 492.

Petitioners have cited no case to the contrary, or no decision of this Court or of any Court of Appeals in conflict with the holding of the Court of Appeals of the Fifth Circuit herein.[6]

On the other hand, they merely argue that evidence was insufficient to justify any such finding. This was contrary to the opinion of the trial judge (R. 625) and contrary to the finding of the Court of Appeals. However, neither court granted Respondents a directed verdict but this cause is now remanded to the District Court for a determination by a jury of this very issue of fact. Here again Petitioners are relying for certiorari on a disputed factual issue.

---

[5] Mississippi recognizes the defense of assumption of risk in tort actions, although it has by statute been eliminated as a defense in a master and servant relationship. Cf. *Saxton* v. *Rose*, 29 So. 2d 646; *Elias* v. *New Laurel Radio Station, Inc.*, 146 So. 2d 558.

[6] I.e., "We think the tort principle of volenti non fit injuria applies to the claim asserted for a civil rights violation under 42 U.S.C.A. 1983 as well as to the common law action."

III. *Certiorari should not be granted to review the holding that under the facts here and after the finding of the jury here that Respondents were immune from liability for false imprisonment at common law under the Mississippi rule.*

Here again the Petitioners have confused the issue by the wording of their reason for granting the writ.

As the Court below pointed out, the action brought by Petitioners was twofold, i.e., a common-law tort claim for false imprisonment and a statutory claim for damages under *42 U.S.C.A.* 1983.

The Court of Appeals merely held that under the facts in this record and after a jury verdict for the Respondents that under the controlling Mississippi law there was no liability on Respondents for false imprisonment *at common law* and the immunity of Respondents on this issue was affirmed.

The Court below had before it, in considering the common law cause of action, a large number of Mississippi cases holding that there could be no recovery of damages against a police officer merely because a subsequent trial acquits the defendant or because the defendant is discharged without trial *if there was in fact probable cause for the arrest, and the arrest was made in good faith in the regular and proper manner.*[7] *King* v. *Weaver,* 127 So. 718; *State* v. *Broom,* 58 So. 2d 32; *Forsythe* v. *Ivey,* 139 So. 615.[8] Cf.

---

[7] The question of "probable cause" being one for the jury. *Howell* v. *Viener,* 176 So. 731; *Lenaz* v. *Conway,* 105 So. 2d 762.

[8] "Probable cause" negatives actual misuse of the authority granted by statute. Nor is *Nesmith* v. *Alford,* C.A. 5, 318 F. 2d 110, certiorari denied 375 U.S. 975, 11 L.ed.2d 420, in point, in that it was decided under the very different Alabama law where the act of an officer in arresting without a warrant was unlawful regardless of the presence of probable cause and where under the Alabama breach of the peace statute it was not a crime for persons to act in a peaceful manner merely because such lawful and peaceful conduct incites a breach of the peace by others.

Sections 2470 and 2474 of the *Mississippi 1942 Code,* copies of which are attached as Appendix B.

The Court below then raised the question of whether or not this rule was applicable although the arrest was made under a criminal statute which was *later* held unconstitutional and correctly stated that under the Mississippi law a common law cause of action for damages could not stand under such circumstances, citing *Golden* v. *Thompson,* 11 So. 2d 906.[9]

However, we again point out that the Court below was in error in assuming that the Mississippi statute had been declared absolutely void or unconstitutional on its face, i.e., regardless of how it was applied or the particular facts and circumstances of the application thereof. Criminal prosecution in *Thomas* v. *State,* Miss., 160 So. 2d 657, was merely reversed by this Court in 14 L.ed.2d 265 by per curiam opinion referring only to *Boynton* v. *Virginia,* 364 U.S. 454, 5 L.ed.2d 206. There again a criminal conviction was merely reversed *and this Court pretermitted the constitutional issue* and merely held that where the criminal defendant had been arrested at the request of the owner of a restaurant in the terminal of a carrier solely on account of race, the arrest was illegal under the Interstate Commerce Act.

We agree with Petitioners that the issue was ". . . whether the arrest was really in reliance upon the statute or whether the police really arrested petitioners because they were an integrated group and used the 'breach of the peace statute' as a sham justification for the arrest . . . whether it was knowingly applied unconstitutionally".[10] However, this issue had been determined in favor of Respondents by the jury under instructions which the Court below found adequate.[11]

---

[9] Also cited with approval in *Miller* v. *Stinnett,* C.A. 10, 257 F. 2d 910, where the Court held that the tests were whether or not the arrest and detention was made in good faith in reliance on the ordinance.

[10] Petition, p. 19.

Petitioners have cited no authority from this Court or any other Court to the effect that the Mississippi law would not be controlling in a common law action for damages against policemen and no Mississippi authority in conflict with those cited by the Court of Appeals.

IF CERTIORARI IS GRANTED, THEN THE COURT SHOULD REVIEW THE VAGUE AND INDEFINITE LANGUAGE OF THE OPINION OF THE COURT BELOW AND THE POSSIBLE INTERPRETATION THEREOF AS LIMITING THE DEFENSE OF POLICE OFFICERS IN ACTIONS UNDER 28 U.S.C. 1983 SOLELY TO WHETHER OR NOT PETITIONERS INVITED OR CONSENTED TO THE ARRESTS AND IMPRISONMENT FOR WHICH THEY SEEK DAMAGES.

The Court below after dismissing the action as to the judge and after dismissing the action in so far as it sought damages for false imprisonment at common law, then reversed for errors in admission of evidence and remanded the case for a new trial on the issue of the liability of the police officer under *42 U.S.C.* 1983.

The opinion of the Court below is, we submit, confusing as to what is exactly held.

The Court first points out that police officials do not have absolute immunity from arrests. No contrary claim is made. Respondents merely claim that they have the same quasi judicial immunity which protects police officers at common law, i.e., if the arrests were made on probable cause and in good faith, i.e., good faith reliance on the statute and good faith appraisal of the facts and circumstances.

---

[11] The instructions as a whole (R. 627-643) are somewhat inept and conflicting. This very conflict cured the ineptness thereof. When the jury was instructed that they could find for the Respondents if they found from a preponderance of the evidence that at the time of the arrest the officers had "probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested", this was necessarily a charge that they must find that the police officers did not arrest Petitioners merely because they were an integrated group and did not knowingly apply the statute unconstitutionally.

The Court below first stated that there was "uncertainty" as to the extent to which immunity of police officials applied under the Civil Rights Act—thus indicating that to some extent there was certainly some immunity even under the Civil Rights Act.

The Court, however, then went further and said: "The defense of immunity is not available to the police appellees in this case."[12] If the Court was referring to complete immunity, we have no fault to find therewith. If, however, the Court meant that there could be no jury issue as to whether or not they were not under the particular facts and circumstances immune in an action under *28 U.S.C.* 1983 on the determination by the jury that the arrests were legal and on probable cause and made in good faith, then, we submit, that the Court below was in error.

This above statement of the Court below was based only on two cases:

Cohen v. *Norris*, C.A. 9, 300 F. 2d 24, dealing solely with the sufficiency of a complaint against motion to dismiss, for damages against police officers allegedly subjecting the plaintiffs to unreasonable searches and seizures without a search warrant and not as an incident to any arrest, much less a valid arrest, i.e., a clear misuse of their authority as policemen. The Court did not preclude officers from a defense thereto but merely held that the complaint was sufficient. "The burden of proving exceptional circumstances which would authorize a search, without a search arrant, and not incident to a valid arrest, should be upon those who conducted the search, as a matter of defense." The Court carefully stated: "But here it is alleged that appellees had *unlawful purposes* in exercising force and in conducting a public search. Whether appellant can prove that such purposes existed, or what if any damages may have been sustained, are matters which are not now before us."

---

[12] And also in concluding the opinion the Court remanded the case ". . . so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment", as if this were the only defense available to them.

and

Monroe v. *Pape,* 365 U.S. 167, 5 L.ed.2d 492, again involving merely the sufficiency of the allegations of the complaint on motion to dismiss. Here again the officers allegedly had broken into the plaintiffs' home and routed them from bed and mistreated them and ransacked every room and detained them for ten hours without charges, all without a search warrant or an arrest warrant, i.e., a clear misuse of authority as policemen not only not acting under any statute or ordinance but acting in direct conflict with the local statutes and ordinances. The principal issue there was whether or not they were acting under color of state law when they merely abused their position, an issue not here involved. The Court then went no further, in holding the complaint sufficient, than state that the civil rights statutes did not require a criminal intent as did the criminal civil rights statutes, or "wilfulness", but that "Section 1979 (18 U.S.C. 1983) should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions."

Under the background of common law tort liability police officers have a quasi immunity from damages for false imprisonment if the arrest is made in good faith on probable grounds, i.e., this is a general principle of the common law, not one peculiar to Mississippi. *35 C.J.S.,* False Imprisonment, Section 25, frequently applied in the federal courts. *Carr* v. *National Discount,* C.A. 6, 172 F. 2d 899, certiorari denied 94 L.ed. 495; *Ravenscroft* v. *Casey,* C.A. 2, 139 F. 2d 776, certiorari denied 89 L.ed. 596, 323 U.S. 745. It is thus no local rule of immunity unassociated with a generally recognized common law immunity.

Since *Monroe* v. *Pape* the federal courts have consistently continued to hold that actions for damages against police officers *under the Civil Rights Act* could be defended on the ground of probable cause for the arrest or the rational basis for the arrest and the ground that the officer in making the arrest did so in good faith in the performance of his official duties as he understood them, i.e., defend on the ground that the statute or ordinance was not a sham justification for the arrest and that it was not knowingly wrongfully applied.[13] *Smith* v. *Dougherty,* C.A. 7, 286 F. 2d 777 (1961), certiorari denied 7 L.ed.2d 97, 368 U.S. 903; *Pritchard* v. *Downie,* C.A. 8, 326 F. 2d 323 (1964); *Joyce* v. *Ferrazzi,* C.A. 1, 323 F. 2d 931 (1963); *Striker* v. *Pancher,* C.A. 6, 317 F. 2d 780 (1963); *Hurlburt* v. *Graham,* C.A. 6, 323 F. 2d 723 (1963).

If the apparent holding of the Court of Appeals is therefore in direct conflict with these decisions of other Courts of Appeal, can it be justified solely on the ground that three years after the arrests complained of the statute was held unconstitutional? *Monroe* v. *Pape,* supra, does not so hold but merely involved acts of officers in direct conflict with valid statutes.[14]

The Court of Appeals in its opinion cites no case holding that in an action under *28 U.S.C.* 1983 there can be a recovery of damages against arresting officers when the arrests otherwise non-actionable were made under a statute constitutional on its face but later held unconstitutional. That very court had previously held to the contrary. In *Whittington* v. *Johnston*, C.A. 5, 201 F. 2d 810, the Court stated: "In invoking the Alabama statute, defendants were entitled to act upon the presumption that the statute is valid, as it has (at that time) not been authoritatively declared otherwise . . ."

---

[13] And this is the defense that Respondent policemen urge that they have the right to make here.

[14] The Court below therefore has, we submit, no justification for the statement that "Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses."

This is also indicated in *Striker* v. *Pancher*, C.A. 6, 317 F. 2d 780, and *Hoffman* v. *Halden*, C.A. 9, 268 F. 2d 280.

The rule in Mississippi is that there can be no liability merely on this ground. The Court below merely stated that this "*may* be" a minority rule. Certainly there is a conflict of authority on this question among the various states and the Mississippi rule is not purely a local rule. However, we submit the Mississippi rule is the federal rule.

The controlling case is *Chicot County Drainage District* v. *Baxter State Bank*, 84 L.ed. 329, 308 U.S. 371, where the Court refused to apply the principle of absolute retroactive invalidity of a statute. Cf. *Thomas* v. *Chamberlain*, 143 F. Supp. 671, affirmed 236 F. 2d 417, C.A. 6, following the Texas rule in a statutory civil rights action; *Cudahy Packing Co.* v. *Harrison*, 18 F. Supp. 250, applying the rule to the conduct of an officer under a federal statute which was later held void; *Phipps* v. *School Dist. of Pittsburgh*, C.A. 3, 111 F. 2d 393, following *Chicot*.

Here, however, the Mississippi statute has not been held totally invalid, but merely that a criminal conviction would not stand where someone was put out of a restaurant in the terminal of a carrier solely on account of race. The police officers here would be entitled to the defense that the arrests were not made on account of race. The statute being valid on its face, the officers were under the duty of enforcing it if in the good faith exercise of their honest judgment and discretion they thought the enforcement thereof was necessary. Policemen are not lawyers and they should not be required to pass on a possible future invalidation of the statute. If our police officers and their families are to be pauperized for enforcing what they believe to be valid statutes then the enforcement of criminal laws will sink to lower depths than it has already done in some areas. Policemen will be afraid to risk performing their duties.

Conclusion

We submit that the Petition for Writ of Certiorari should not be granted because there is no merit therein and no justifiable reason for the granting of certiorari under Rule 19.

Also we had thought, and now think, that the issues with reference to the police officers should await the final outcome of this litigation and a final judgment herein prior to any review by this Court. However, if mistaken in this and if this Court issues a Writ, then Respondents submit that this Court should review the additional issue submitted by them.

Respectfully submitted,

Thomas H. Watkins,
Suite 800 Bankers Trust Plaza
Building,
Jackson, Mississippi.

Elizabeth Watkins Hulen Grayson,
Suite 800 Bankers Trust Plaza
Building,
Jackson, Mississippi,
Counsel for Respondents.

Certificate of Service

The undersigned of counsel certifies that a true and correct copy of the foregoing Respondents' Opposition to Petition for Writ of Certiorari and Alternative Cross-Petition was this day mailed by United States mail, postage prepaid, to: Carl Rachlin, 38 Park Row, New York, New York, and Melvin Wulf, 156 Fifth Avenue, New York, New York, attorneys of record for Petitioners.

This the 25th day of March, 1966.

THOMAS H. WATKINS,
Of Counsel for Respondents.

APPENDIX A

Mississippi 1942 Code

§ 2087.5. Disorderly conduct—may constitute felony, when.

1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

> (1) crowds or congregates with others in or upon shore protecting structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, or
>
> (2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or
>
> (3) while in or on any public bus, taxicab, or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in subsection (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process

of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refusing to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof,

shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; and if any person shall be guilty of disorderly conduct as defined herein and such conduct shall lead to a breach of the peace or incite a riot in any of the places herein named, and as a result of said breach of the peace or riot another person or persons shall be maimed, killed or injured, then the person guilty of such disorderly conduct as defined herein shall be guilty of a felony, and upon conviction such person shall be imprisoned in the Penitentiary not longer than ten (10) years.

2. The provisions of this act are supplementary to the provisions of any other statute of this state.

3. If any paragraph, sentence, or clause of this act shall be held to be unconstitutional or invalid, the same shall not affect any other part, portion or provision of this act, but such other part shall remain in full force and effect.

APPENDIX B

MISSISSIPPI 1942 CODE

§ 2470. Arrests—when made without warrant.

An officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence; or when a person has committed a felony, though not in his presence; or when a felony has been committed, and he has reasonable ground to suspect and believe the person proposed to be arrested to have committed it; or on a charge, made upon reasonable cause, of the commission of a felony by the party proposed to be arrested. And in all cases of arrests without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense, or is arrested on pursuit.

§ 2474. Arrests—no liability for if made legally.

Officers and others who make arrests as authorized or required by law, shall not be liable on account thereof, civilly or criminally, notwithstanding it may appear that the party arrested was innocent of any offense.

Supreme Court of the United States

No. ----------, *October Term, 19* **65**

ROBERT L. PIERSON, ET AL.,

Petitioners,

vs

J. L. RAY, ET AL

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

February 24, , 19 66

/s/ Hugo L. Black
Associate Justice of the Supreme Court of the United States

Dated this 21st

day of January, 1966

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 79

ROBERT L. PIERSON, ET AL, *Petitioners,*

vs.

J. L. RAY, ET AL, *Respondents.*

No. 94

J. L. RAY, ET AL, *Petitioners,*

vs.

ROBERT L. PIERSON, ET AL, *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN CAUSE NO. 79 AND PETITIONERS IN CAUSE NO. 94

THOMAS H. WATKINS,
ELIZABETH WATKINS HULEN GRAYSON,
Suite 800 Bankers Trust Plaza
Building,
Jackson, Mississippi,
Counsel for Respondent.

Of Counsel:

WATKINS & EAGER,
Suite 800 Bankers Trust Plaza
Building,
Jackson, Mississippi.

Intr
Que
Stat
Con
Cert
App
App

Poi

Poi

Poi

Poi

INDEX

Page

Introductory Statement 1
Questions Presented 2
Statement of Facts 7
Conclusion 72
Certificate of Service 74
Appendix A 75
Appendix B 79

Point I

The Court Below Correctly Held That There Was No Liability for Damages of the Police Officers Under Petitioners' Common Law Count Which Was a Tort Claim for False Imprisonment if the Officers Acted in Good Faith and Had Reasonable and Probable Cause to Believe That the Statute Was Being Violated 19

Point II

The Court Below Properly Held That 42 U.S.C. 1983 Does Not Abrogate or Destroy the Common Law Doctrine of Judicial Immunity 26

Point III

The Court Below Properly Held That There Was No Liability of the Police Officers for Money Damages Under 42 U.S.C. 1983 if the Petitioners Deliberately Planned and Provoked the Arrests for Which the Damages Are Sought 38

Point IV

42 U.S.C. 1983 Does Not Abrogate and Completely Destroy the Limited Immunity or Privilege of Police Officers Acting in Good Faith on Probable Cause. Therefore the Court Below Erred in Holding That There Was Not a Jury Issue as to Whether or Not the Police Officers Acted on Probable Cause in Making the Arrests so as to Absolve Them From Liability for Money Damages Under 42 U.S.C. 1983 45

Point V Page

The Court Below Was in Error in Holding That the District Court Made Reversible Error in the Admission of Evidence 67

Citations

Cases:

Agnew v. *City of Compton*, 239 F.2d 226, cert. den. 1 L.ed. 2d 910, 353 U.S. 959 .... 55, 59
Asgill v. *United States*, C.A. 4, 60 F.2d 776 68
Baldwin v. *State*, 167 So. 61 .... 22, 23
Barr v. *Matteo*, 360 U.S. 564, 3 L.ed.2d 1434 .... 45, 48
Bass v. *United States*, C.A. 8, 326 F.2d 884, cert. den. 12 L.ed.2d 176 68
Bauers v. *Heisel*, C.A. 3, 361 F.2d 581 (1966) (Adv. sheets) 34, 35
Beauregard v. *Wingard*, 362 F.2d 901 55
Bershad v. *Wood*, C.A. 9, 290 F.2d 714 48
Bottone v. *Lindsley*, C.A. 10, 170 F.2d 705, cert. den. 93 L.ed. 1101 46
Bowens v. *Knazze*, D.C. Ill., 237 F. Supp. 826 (1965) 5, 59
Bradley v. *Fisher*, 80 U.S. 335, 20 L.ed. 646 .... 27, 32
Brawner v. *Irvin*, 169 F. 964 47
Breard v. *Alexandria*, 341 U.S. 622, 95 L.ed. 1233 ... 39
Brotherhood of R. and S. Cl., etc. v. *Norfolk So. Ry. Co.*, C.A. 4, 143 F.2d 1015 47
Buchanan v. *Warley*, 245 U.S. 60, 62 L.ed. 149 38
Bucher v. *Krause*, C.A. 7, 200 F.2d 576, cert. den. 97 L.ed. 1404 24
Bullock v. *Tamiami Trail Tours, Inc.*, C.A. 5, 266 F.2d 326 54
Byrne v. *Kysar*, C.A. 7, 347 F.2d 734 36
Cantwell v. *Connecticut*, 310 U.S. 296, 84 L.ed. 1213 39
Carmack v. *Gibson*, 363 F.2d 862 31
Carr v. *National Discount*, C.A. 6, 176 F.2d 899 24
Chapman v. *United States*, 5 L.ed.2d 828, 365 U.S. 610 .... 51, 66
Chapman & Dewey Lumber Co. v. *Hanks*, 106 F.2d 482 69
Cobb v. *City of Malden*, 202 F.2d 701 51

Page

Cohen v. *Norris,* 300 F.2d 24 .... 45, 50, 55, 65
Cooper v. *Aaron,* 358 U.S. 1, 3 L.ed.2d 5 38
Copeland v. *State,* 30 So.2d 509 .... 22, 23
Cox v. *New Hampshire,* 312 U.S. 569, 85 L.ed. 1049 39
Davis v. *Turner,* C.A. 5, 197 F.2d 847 66
Downie v. *Powers,* 193 F.2d 760 54
Dickson v. *United States,* C.A. 10, 182 F.2d 131 68
Director General v. *Kastenbaum,* 68 L.ed. 146, 263 U.S. 25 23
Feiner v. *New York,* 340 U.S. 315, 95 L.ed. 295 39
Fisher v. *United States,* C.A. 9, 231 F.2d 99 68
Ford v. *Ford, Mass.,* 10 N.E. 474 43
Forsythe v. *Ivey, Miss.,* 139 So. 615 21
Francis v. *Crafts,* C.A. 1, 203 F.2d 809, cert. den. 98 L.ed. 357 33
Gabbard v. *Rose,* C.A. 6, 359 F.2d 182 (1966) 36, 59
Garner v. *Louisiana,* 368 U.S. 157, 7 L.ed.2d 207 71
Gardner v. *United States,* C.A. 10, 283 F.2d 580 68
Globe v. *Rutgers Fire Ins. Co.* v. *Draper,* C.A. 9, 66 F.2d 985 47
Goins v. *Hudson,* 55 S.W.2d 388 25
Gregoire v. *Biddle,* C.A. 2, 177 F.2d 579 48
Hannan v. *United States,* 131 F.2d 441 69
Heard & Company v. *Krawill Machinery,* 3 L.ed.2d 820, 359, U.S. 297 47
Henry v. *United States,* 4 L.ed.2d 134, 361 U.S. 98 25
Henry v. *State, Miss.,* 154 So.2d 289, cert. den. 11 L.ed.2d 604 27
Hughes v. *Superior Court,* 339 U.S. 460, 94 L.ed. 985 39
Hulberstadt v. *Nelson,* 226 N.Y.S.2d 100 44
Hurlburt v. *Graham,* 323 F.2d 723 59
Jennings v. *Nester,* 217 F.2d 153 56
Johnson v. *United States,* 333 U.S. 10, 92 L.ed. 436 .... 51, 66
Jones v. *State,* Miss., 76 So.2d 201 .... 68, 72
Joyce v. *Ferrazzi,* 323 F. 2d 931 (1963) 53
Kenney v. *Fox,* 232 F. 2d 288, cert. den. 1 L.ed.2d 66 36
King v. *Weaver Pants Corp.,* Miss., 127 So. 718 23
Knight v. *State,* Miss., 161 So.2d 521 71
Konigsberg v. *State Bar of California,* 366 U.S. 36, 6 L.ed.2d 105 39

Page

Lenaz v. *Conway*, 105 So.2d 762 23

Marland v. *Heyse*, 315 F.2d 312 (1963) 53

McMahan v. *Draffen*, Ky., 47 S.W.2d 716 51

Monroe v. *Pape*, 5 L.ed.2d 492, 365 U.S. 167 . . . . . 45, 49, 65

Morgan v. *Sylvester*, 125 F.Supp. 380, affirmed C.A. 2, 220 F.2d 758, cert. den. 100 L.ed. 768 36

Moss v. *Hornig*, C.A. 2, 314 F.2d 89 46

Mueller v. *Powell*, C.A. 8, 203 F.2d 797 . . . . . 24, 57

National Lab. Rel. Bd. v. *Donnelly Garment Co.*, 91 L.ed. 854, 330 U.S. 219 68

Nelson v. *Knox*, C.A. 6, 256 F.2d 312 64

Nesmith v. *Alford*, C.A. 5, 318 F.2d 110, cert. den. 11 L.ed.2d 420 6

Niemotko v. *Maryland*, 340 U.S. 268, 95 L.ed. 267 39

Norton v. *McShane*, C.A. 5, 332 F.2d 855 at 858, n. 3 48, 62

Oyler v. *Boles*, 368 U.S. 448, 7 L.ed.2d 446 47

Pae v. *Stevens*, C.A. 9, 256 F.2d 208 47

Cf. *People* v. *Galamison*, 342 F.2d 255, cert. den. 14 L.ed.2d 272 6

Picking v. *Pennsylvania R. R.*, 151 F.2d 240 . . . . . 35, 36

Poulos v. *New Hampshire*, 97 L.ed. 1105, 345 U.S. 395 39

Powell v. *Weiner*, 176 So. 731 23

Pritchard v. *Downie*, 326 F.2d 323 5

Pritchard v. *Downey*, 326 F.2d 323 58

Prosser on Torts, 2d Ed., Chapter 4, Section 18, p. 82-83 43

Puett v. *City of Detroit, Department of Police*, 323 F.2d 591 (1963) 36

Rhodes v. *Houston*, 202 F. Supp. 624, affirmed C.A. 8, 309 F.2d 959, cert. den. 9 L.ed.2d 719 36

Rhodes v. *Meyer*, C.A. 8, 334 F.2d 709, cert. den. 13 L.ed.2d 186 36

Roth v. *United States*, 354 U.S. 476, 1 L.ed.2d 1498 39

Sarelas v. *Sheehan*, C.A. 7, 326 F.2d 490 36

Schoen v. *Mountain Producers Corporation*, C.A. 3, 170, F.2d 707, cert. den. 93 L.ed. 1095 36

Seaboard Oil Co. v. *Cunningham*, 51 F.2d 321, cert. den. 76 L.ed. 557 23

Shaw v. *Railroad*, 101 U.S. 557, 25 L.ed. 892 47

Slaughter House Cases, 16 Wall. 36, 21 L.ed. 394 47

Page

Smith v. *Dougherty*, C.A. 7, 286 F.2d 777, cert. den. 7 L.ed.2d 97 .... 36, 56
Snowden v. *Hughes*, 88 L.ed. 497, 321 U.S. 1 46
Spires v. *Bottorff*, 223 F. Supp. 441, cert. den. 13 L.ed.2d 349 36
Tenney v. *Brandhove*, 95 L.ed. 1019, 341 U.S. 367 .. 32, 33
Terminiello v. *Chicago*, 1949, 337 U.S. 1, 4, 69 S.Ct. 894, 895-896, 93 L.Ed. 1131 39
Texas, etc. Co. v. *Abilene Cotton Oil*, 204 U.S. 426, 51 L.ed. 1075 47
Texas General Indemnity Company v. *Daniel*, C.A. 5, 283 F.2d 898 69
Thomas v. *State*, 160 So. 2d 657 .... 18, 30
United States v. *Standard Oil Company*, C.A. 7, 316 F.2d 884 68
Wadlergh v. *New Hall*, 136 F. 941 47
Wells v. *Gaspard*, La., 129 So.2d 245 25
Wright v. *Rockefeller*, 376 U.S. 52, 11 L.ed.2d 512 ... 47
Young Ah Chor v. *Dulles*, C.A. 9, 270 F.2d 338 68

Statutes:

Section 1979 49
Court of Appeals, 272 F.2d 365 49
42 U.S.C. 1983 .... *passim*
First Circuit 51
Tenth Circuit 53
Ninth Circuit 55
Civil Rights Act 57, 62, 63
Fifth Circuit 62
15 Am.Jur.2d 452, et seq., Civil Rights, Section 67 63
28 U.S.C. 1254(1) 1
35 C.J.S. 712 .... 41, 43

Miscellaneous:

Section 1 of the Civil Rights Act 2
Section 2087.5 of the Mississippi 1942 Code, Recompiled .... *passim*

	Page
Fifth Circuit	*passim*
Section 2467 of the Mississippi Code	20
Section 2470 of the Code	21
Section 2474 of the Mississippi Code	21
Section 1227, Code of 1930	23
Section 3374-103, Mississippi 1942 Code	27
Section 2492	27
Section 1834	27
Code Section 1836 and 1839	27
Section 1983	33, 34
Civil Rights Act	34
First Amendment	38, 39, 46
1871 Statute	45
Fourteenth Amendment	46

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 79

ROBERT L. PIERSON, ET AL, *Petitioners,*

vs.

J. L. RAY, ET AL, *Respondents.*

No. 94

J. L. RAY, ET AL, *Petitioners,*

vs.

ROBERT L. PIERSON, ET AL, *Respondents.*

BRIEF FOR RESPONDENTS IN CAUSE NO. 79 AND PETITIONERS IN CAUSE NO. 94

Introductory Statement

This Court has granted certiorari in the case of Pierson, et al, v. Ray, et al, decided by the United States Court of Appeals for the Fifth Circuit and reported at 352 F.2d 213.

Certiorari was granted on petition of Robert L. Pierson, et al, jurisdiction resting under 28 U.S.C. 1254(1). Respondents, J. L. Ray, et al, filed an "Opposition" to the Petition for Writ of Certiorari. They then filed what under Mississippi practice would have been a cross-appeal, but which under the practice of this Court was called an "*Alternative*

Cross-Petition for Certiorari" to review, if certiorari was granted on the Pierson petition, the holding of the Court of Appeals that Respondents who were police officers and were sued for damages under *42 U.S.C. 1983* could not defend on the ground of good faith in enforcing a state statute on probable cause. This Court granted both petitions, the one of Robert L. Pierson, et al, being No. 79 and the one of J. L. Ray, et al, being No. 94. This Court then consolidated the cases. To save confusion we will hereinafter at all times call Robert L. Pierson, et al, "Petitioners" and call J. L. Ray, et al, "Respondents".

The statutes involved are not only Section 1 of the Civil Rights Act, or *42 U.S.C. 1983,* but also Section 2087.5 of the *Mississippi 1942 Code, Recompiled.* A complete copy of said statute is attached hereto as Appendix A.

Questions Presented

Petitioners, three white and one Negro Episcopal clergymen, were part of a group of fifteen Episcopal clergymen who were arrested by Respondents Ray, Griffith and Nichols, policemen of the City of Jackson, Mississippi, and tried by Respondent Spencer, the municipal justice of said city. The four Petitioners here brought suit in the United States District Court for the Southern District of Mississippi, Jackson Division, against all four Respondents jointly for damages in the amount of $44,004.00.

The Complaint was in two counts, one for money damages under *42 U.S.C. 1983* and one for money damages for common law false arrest and imprisonment. Judgment on jury verdict in favor of Respondents was entered in the District Court.

Upon appeal the Fifth Circuit reversed the judgment and remanded the case. A full copy of the opinion of the Fifth Circuit is found R. 444.

Petitioners have, we submit, misunderstood and incorrectly stated the holding of the Court below. The Court first held that Judge Spencer was entitled to a directed verdict and that the court below should have dismissed as to him on his motion at the end of the testimony on the ground of judicial immunity. The Court then held that police officials are entitled to limited or partial immunity under the common law in an action for false imprisonment if under the facts there was probable cause for the arrest.[1] It did not hold, as stated by Petitioners, "... that the state law cause of action against the policemen should be dismissed", but merely held that Petitioners "were not entitled to a directed verdict of liability on the false-imprisonment claim" and reversed and remanded the case for a new trial in accordance with the opinion. The Court then held that Petitioners could not recover under *42 U.S.C. 1983* if a jury found that Petitioners went to Jackson not only contemplating the possibility of being jailed, but with a deliberate design and plan that they should be arrested, i.e., if they had such a design and plan, they were not entitled to recover money damages for having accomplished their objective.

Respondents agree with and seek the affirmance of each of the above holdings.

The Court then remanded the case because of errors in admission of evidence for another trial in accordance with the opinion.

By cross-petition Respondents point out that the Court below also held that the police officers had no immunity under *42 U.S.C. 1983*, i.e., not even limited or partial immunity even if the jury should find that they acted in good faith under a state statute valid on its face on probable cause, i.e., that the Civil Rights Act completely abrogated even the common law limited or partial immunity or privilege of police officers. With this Respondents do not agree and submit that if the cause be reversed and remanded for a new trial that this defense is available to them and the case should be again tried on this issue also.

---

[1] As the jury had found.

The questions therefore presented in Cause No. 79 are:

(1) There is no civil liability for money damages on police officers for common law false arrest where the officers acted in good faith on probable cause and no common law liability of a judge presiding over a court having jurisdiction.

(2) *42 U.S.C. 1983* does not abrogate or destroy judicial immunity.

(3) Police officers are not liable for damages under *42 U.S.C. 1983* if under the facts it is found that Petitioners were arrested because of a deliberate design and plan to be arrested, i.e., Petitioners cannot put into practice a program and conspiracy of planned arrest and confinement and then successfully rely upon such arrest and confinement as the basis for recovery in an action for money damages for false imprisonment. This would be equally applicable under common law false imprisonment.

In Cause No. 94 there is therefore presented the question:

(4) Are police officers automatically liable under *42 U.S.C. 1983* with no defense whatsoever, if the persons arrested are later acquitted, even though they acted in good faith under a state statute valid on its face on probable cause, i.e., does *42 U.S.C. 1983* completely abrogate all limited and partial common law immunity or privilege of police officers?

It must also be remembered:

1. This is not a cause involving an appeal from a criminal conviction. On the other hand, it is a suit for money damages for false imprisonment. Proof necessary to sustain a conviction is much greater than proof to sustain probable cause for an arrest, *Pritchard* v. *Downie,* 326 F.2d 323, *and different rules and principles of law apply.*

2. The arrests involved here occurred in September 1961 at a time when the civil rights uprising had just begun and when the law thereasto was not established. Also at that time the populace of the City of Jackson was very aroused and actual violence imminent. This would not be true in Jackson at this time although it is still true in other locations. The occurrence must be looked at from the viewpoint of that period. "Applicability of the Civil Rights Act to facts must be determined with reference to standards of constitutional protection current at the moment defendant acted." *Bowens* v. *Knazze,* D.C. Ill., 237 F. Supp. 826 (1965).

3. Respondents are not here arguing for any absolute immunity or absolute privilege of police officers, but only for a partial or qualified and limited privilege or immunity from damages when acting on probable cause and in good faith.

4. This case does not involve the jurisdiction of the court under the diversity statute and does not involve the jurisdiction of the court on any ground. Jurisdiction is admitted.

5. This cause does not merely involve the sufficiency of the Complaint. Most reported cases on the subject are only cases where the complaint has been dismissed without

a hearing. We are here discussing the issues presented after full trial on the merits on proper jury instructions and admissible evidence. Cases merely refusing to dismiss a complaint do not rule on or rule out or preclude defenses thereto such as good faith and probable cause.

6. The occurrences here involved were prior to the 1964 Civil Rights Act. Cf. *People* v. *Galamison,* 342 F.2d 255, cert. den. 14 L.ed.2d 272. The police officers here therefore did not violate any provision of that Act.

7. The Mississippi Breach of the Peace Statute, Section 2087.5, Appendix A, is not and has never been held unconstitutional on its face or per se, although unequestionably it can under some facts and circumstances be so enforced as to deprive parties of their civil rights. Section 2087.5 is not vague and indefinite. It does not make it a misdemeanor merely to refuse to obey the order of an officer. However, it does make it a misdemeanor if there is also (1) crowding or congregating with others, *and* (2) if the defendant is in a place of business engaged in selling or serving members of the public, etc., *and* (3) if there is an order to disperse or move on by a law enforcement officer, *and* (4) if the order is disobeyed, *and* (5) if there exists circumstances such that a breach of the peace may be occasioned[2] thereby or violence in others might be caused. If such conduct actually leads to a breach of the peace or incites a riot then the offense is made a felony. Nor can it be retroactively held that the enforcement thereof under the facts and circumstances here, valid at the time, deprived Petitioners of their civil rights. Because Petitioners in their brief repeatedly state, on all issues, that this statute is void on its face requiring a directed verdict against the police officers, our position is briefed as Appendix B hereto.

---

[2] Unlike the Alabama statute involved in *Nesmith* v. *Alford,* C.A. 5, 318 F.2d 110, cert. den. 11 L.ed.2d 420.

We submit that this case must be reversed and remanded to the District Court for a new trial on all issues except the liability of Judge Spencer, and the finding of the Fifth Circuit on his immunity as a matter of law should be affirmed. However, if the Court below was in error in holding that introduction of certain evidence was reversible error, then this cause should be reversed and the judgment of the District Court reinstated in that there had been a jury verdict for Respondents.

Statement of Facts

On September 13, 1961, at about 11:20 a.m. fifteen Episcopal clergymen, twelve white and three Negro, all in full clerical garb, made a ceremonious entry as a group into the waiting room of the Continental Trailways Bus Station in Jackson, Mississippi. The fifteen clergymen proceeded across the waiting room toward the coffee shop in the bus station and as they were entering the coffee shop two police officers of the City of Jackson, Respondents Griffith and Nichols, told them to stop. The clergymen, including the four Petitioners here, obeyed the order and came back into the waiting room and congregated there standing in a group so as to block the stairs and congregating so as to be in full view of all of the occupants of the bus station waiting room.

Respondents Nichols and Griffith told the crowd several times to "Move along". None of the group obeyed the order. Instead the Lord's Prayer was said in unison. These Respondents then stated that the crowd was under arrest. The officers then called Respondent Chief Ray. When Ray arrived he again merely ordered the group of clergymen to move along, giving the order several times. No one obeyed the order. Chief Ray then again declared the group under arrest and himself led them through the waiting room to the paddy wagon and took them to the City

Jail in Jackson. The arrests were made under Section 2087.5 (See Appendix A). Respondents in so doing were admittedly at all times courteous and considerate.

There was a conflict of fact as to whether or not there was probable cause for the police officers to believe that the acts of the group of clergymen might cause violence on the part of the crowd in the waiting room. Petitioners' testimony was to the effect that although there were people watching them they were quiet and making no threatening gestures. The testimony of Respondents, on the other hand, was to the effect that the summer and fall of 1961 was a very abnormal time in Jackson immediately following the influx of the "Freedom Riders" in Alabama which had led to riots and bloodshed; that their later trip to Jackson had caused the City to be very tense. That all news medium had carried to the public the general information that Petitioners were coming and that there was much resentment thereof by the people of Jackson. Chief Ray testified:

> "A. I arrived at the Trailways bus terminal about 11:30 or 11:35. As I approached the terminal from the rear through the lot there, I was approached by a gentleman as I was entering there, and he told me that I had better hurry and get inside, and there was going to be some serious trouble. I immediately walked into the terminal, and it was an unusual amount of people in the terminal, and they were in a very dissatisfied and ugly mood, I would call it. And the focus point was near the entrance to the cafeteria, where a group of 15 ministers were standing. * * * The circumstances was there that was such that had I not removed the cause or the root of the trouble, there would have been violence and possibly bloodshed." (R. 395, 397)

He further stated:

> "A. 'As I have already described, they were an advertised group, and I have already told you that has been almost a month since the Freedom Riders were there and people were back kind of peaceful, kinda', and of course, when this advertised group came out in the paper and through the radio, there was a tense situation again, and they thought it was another movement of Freedom Riders. We had worked real hard to prevent any violence, and we didn't want to start again'." (R. 349)

Respondent Nichols confirmed this testimony and stated that some twenty-five to thirty people followed the group from the taxi into the station and that there were about that many more already in the station; that they were mumbling and in a very ugly mood, moving about and talking. (R. 406)

This testimony was further confirmed by Respondent Griffith who stated that he arrested them because they would not move on and if he had not "there would be violence and bloodshed. . . I felt we have a clean city here and I hope and pray that we can keep it this way and not have violence and bloodshed." (R. 416) That the crowd was in an ugly mood as reflected by the expressions on their faces and were making threatening gestures. He testified:

> "Answer: "The people of the City of Jackson was in a tense mood at that time, and they came in as a group as they did and the other people in the Trailways bus station was in an ugly mood. You could hear some mumbling in their voices and expressions on their

> faces.' * * * Question: 'Did they have threatening gestures?' Answer: 'Yes.' " (R. 342)

There was no testimony whatsoever that the arrests were made merely because Petitioners were an integrated group, but that they were made because there was danger of actual violence in the crowd. There was no proof whatsoever that the City police were in the habit of arresting every integrated group, where there was no actual danger of violence, or that the Jackson police did on this occasion or ever use the statute as a sham justification for an arrest or that they did not enforce the statute without discrimination against any individual or group where violence was imminent.

There is very strong evidence that the fifteen Episcopal clergymen belonging to the group that were arrested by Respondents deliberately planned for and worked toward their being arrested by the police officers of the City of Jackson. There is, of course, a conflict of fact. Petitioners state that they were witnesses for integration and merely knew that there was danger of or a possibility of their being arrested. On the other hand, from their own written evidence there clearly appears that they had planned to and were on the trip for the purpose of becoming *"Witnesses for Incarceration"* and went into the terminal waiting room with deliberate intent to provoke an arrest, picking a time and place and manner of so entering as to best assure themselves that they would be arrested.

The group, including other clergymen beside the fifteen arrested, were members of the Episcopal Society for Cultural Racial Unity, an organization of Episcopal clergy but not connected with the church itself. The pilgrimage was organized by and under the direction and control of the Reverend John B. Morris, one of the Petitioners. He personally solicited the personnel of the group which was to take this pilgrimage beginning in New Orleans on to Jackson and then to Detroit where they were having a general meeting of ESCRU. The trip was made so that the pilgrims or members of the group, or at least some of them, could end up at the Detroit meeting and witness their efforts to promote the desegregation in the church and in society. (R. 134) However, beyond that they also planned and intended to get arrested so that they could go to the Detroit meeting and be "Witnesses for Incarceration."

Petitioner Morris obtained participants in the pilgrimage by letters addressed to Episcopal clergymen who were members of the ESCRU. Therein he stated frankly the purposes of the pilgrimage and the various plans for the pilgrimage and their arrest during it. He wrote frequent letters, after the group was organized, giving details as to their purposes and plans and issuing orders thereasto. These letters were in the nature of Directives from the Commander of the group to the members thereof.

One of the earlier Directives addressed "To Pilgrimage Applicants" was dated August 4, 1961. (R. 205) This letter contained the following language:

> "You are one of twenty-two priests accepted for the Prayer Pilgrimage tentatively. A list of these persons accompanies this letter. . . .
>
> * * *
>
> "I may be in error, but I believe that 16 of the accepted applicants are white and 6 are Negro. I am sorry that we do not have more of the latter and, also, that thus far we do not have any of still other backgrounds. . . .
>
> * * *

"The Greyhound Company said yesterday that equipment might not be available. . . The fact that equipment may be unavailable for charter purposes, however, will not cause any significant change in our plans. We can take regularly scheduled runs. . . . An advantage to us would come in cost for presumably only a portion of the pilgrimage group will be able to complete the trip and it would be a rather expensive item to have a half-empty bus make the last part of the journey. . . .

* * *

"Depending on various things above we might change our starting point to Jackson, Mississippi. . . . We would only miss one school in New Orleans and could go over to Vicksburg to visit All Saints' College before any of the group kept an appointment with the Jackson jailer. . . .

* * *

". . . At the starting point, whether New Orleans or Jackson, the Rev. Wyatt T. Walker, Executive Director of the Southern Christian Leadership Conference, will direct our preparations connected with non-violent discipline. He will come to Detroit also in all likelihood to be on hand when those who have been in jail arrive probably just in time for the ESCRU dinner on September 20th.

". . . If there are 30 participants we should plan on between one-half and one-third completing the entire tour so that the concern might be carried to each place and, symbolically, the torch carried to Convention. This would mean that between fifteen and twenty would sojourn awhile in probably a Mississippi jail. A few might seek light refreshments the morning of the 12th when we are in Vicksburg and they would then be held there by the Vicksburg jailer. The greater number intended by the witness of incarceration would probably choose to go to Jackson for this. Those who will bear the burden of watching colleagues taken off in the paddy wagon (as I did in Jackson two weeks ago) will continue the trip so that the message of concern may be carried to Detroit. Presumably the group will be able to determine who does what in a manner agreeable to all. I would hope that some would be left to go on through, and, indeed, the bail factor may require that we limit those to be jailed to around ten if there is to enough money to bail them out when decided.

"... In nearly all other cases connected with Freedom Riders a certain length of time in the jail is sufficient to make the witness effective. I think that we should be very flexible in this matter: If someone has to hurry home because of an emergency or to be on hand for Sunday services it should be up to him when he is bailed out. There are preliminary hearings three times a week in Jackson so that the most you would have to stay in jail pending a hearing would be two days. Above that it is optional....

"... If some reason you would prefer to take care of your own bail please let me know and this will further strengthen our available resources for others. Should something develop in the next few weeks to indicate that a sufficient amount for bail for at least ten of our group is not available I will write you again. In the present context of things we will want to send at least ten of the pilgrimage participants to jail.

"... it might be helpful for you to alert any press persons known to be sympathetic ... they might want to do an advance story. Don't be reticent or self-

> conscious about the matter if your concern is to strengthen our witness through its advertisement in advance. . . ." (R. 205-211)

The details as to the plans for being assured that they would be arrested, how many would be arrested, etc. were repeated over and over again in the various later Directives. CORE had agreed to put up some of the money for bail. One letter stated:

> "The suggestion has been made that we hope that the entire group might visit the jail . . . but an alternative would be for a portion of the group to be bailed out forthwith and continue the trip. . ." (R. 224)

At another point he suggested that only ten might be able to go to jail.

Morris stated that he had already arranged for a lawyer to be furnished by CORE with whom he would go over the "legal points". (R. 226)

On August 19th he advised them:

> ". . . All in all, though, I think you can count on becoming *familiar* with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for others when he said: 'About jail—Here am I, send me. I'm not brave, but I'm obedient.'
>
> "We *we* arrive in Jackson late Tuesday afternoon it will be time for supper and we can seek to have it then and there which will mean that the Jackson jailer would be our host for the evening. I am trying to determine whether we could stay at a college campus that night if it seemed advisable to await the next day for this appointment with destiny. I do not see any reason for not having our supper upon arrival, but I'll wait until my meeting Monday with CORE's lawyer to

> see what procedure would be best. If we stayed overnight we would have to purchase individual tickets the next day and be headed for an intended trip. . ." (R. 226-7)

He carefully instructed the participants:

> ". . . For reading in the jail I suggest the P.B., your Bible, and other things you may want to meditate upon."

He again stated:

> "I shall prepare a news release for September 3rd revealing final plans and giving the names of those to be involved. . . Don't be surprised if the arresting officers and others are quite civil and polite: It's a poor picture of the Northern image of the South when 'riders' tell the press how pleasantly surprised they were. . ." (R. 228-9)

In still another letter he stated:

> "There are many possibilities, but at the present it looks like it may be the better part of valor to *consign* only a dozen men to jail. The picture could change. Some may want to stay in jail or await help from the Church back home. . . ." (R. 239)

See the series of Directives made exhibits to the testimony of the witness Morris (R. 176, 188, 193, 196, 205, 222, 238, 240, 244).

Thus, Petitioners well knew the danger of and were anticipating actual violence from others as a result of their appearance under the carefully planned circumstances. They knew that their trip had been higly publicized by all news medium and had planned for their appearance and trip to be so publicized and instigating the publicizing thereof. They knew of the tension among the local people and knew that their acts would be very controversial. They had been carefully trained to expect violence from others and to submit thereto.

Petitioners thus definitely planned in advance and conspired that a certain number of their group would actually go to jail and be "witnesses for incarceration". There was no mention in the Directives of later collecting money damages from the arresting police officers. However, they immediately after their acquittal sought such money damages. They admittedly knew that the circumstances were such that a breach of the peace or violence of the crowd would probably occur and had congregated with the deliberate intent to provoke such a breach of the peace. The acts of the group constituted a conspiracy to cause a breach of the peace.

The planned procedure was followed out and the planned results accomplished and the fifteen clergymen were arrested and jailed. Petitioners admit that they were regular processed upon arrival at the jail and that a proper affidavit was filed by Chief Ray in the police court of the City of Jackson. No bail was requested at that time although it was obtainable. They were arrested at noon on the 13th. They were duly tried in the Police Court under Respondent Judge Spencer on September 15th. From then on, of course, the police officers had no further participation in what occurred. They were represented by counsel before Judge Spencer, including a local attorney and the chief legal adviser for CORE. No jury trial was requested by Petitioners although one could have been had by them if requested. None of the Petitioners testified in their own behalf although Judge Spencer would have heard the same and he did hear evidence from Respondents. Petitioners were on this evidence convicted and given four months in jail and $200.00 fine. Release on bail was immediately available to them but only obtained later at various times at the convenience of Petitioners. The courtesy with which they were treated was freely admitted.

Judge Spencer under the evidence before him was of the opinion that the Petitioners were guilty of violation of the ordinance. (R. 369) The fact that he might have been in error on the question of law as to whether mere disobedience of the order of a police officer could be a misdemeanor is immaterial, the question being one which has caused differences of opinion among judges of superior courts. Nor is it material that in rendering his opinion he referred to provisions of the Episcopal Prayer Book, the reference not being his standpoint for judging the guilt or innocence of the Petitioners. (R. 369-70)

There was no proof whatsoever of any conspiracy entered into by Judge Spencer with reference to these cases. Each and every one of the Respondents testified that Judge Spencer had nothing whatsoever to do with the arrest of Petitioners and the cases were never discussed with him and that he knew nothing of the cases until they came up for trial in his court and then were decided only on the evidence submitted.

The case was tried de novo on appeal to the County Court of Hinds County, Mississippi. Petitioner Jones was tried before a jury and a directed verdict for said Petitioner was granted. Petitioners are in error in stating that it was granted because there was *no* evidence to support the same. The judgment of the Court was merely that it was granted. (R. 82) This decision could have been either on the ground that the evidence was *insufficient* in the judgment of Judge Moore to show a violation *or* that it was insufficient for a conviction in view of his interpretation of the statute. *Or,* as suggested by Respondents themselves, it could have been purely on the basis of respect for the Episcopal Church and a dislike to allow a conviction of clergymen. (R. 148-9) In the other cases judgments of nolle prosequi were entered.

The judgments in the County Court were entered in the late Spring of 1962. By September 10, 1962, this action was brought by these Petitioners for damages against all Respondents as joint tort-feasors in the amount of $11,101.00 for each of the four Petitioners.

At the trial of this case before a jury there was ample evidence to support the finding of the jury that Respondent officers in making the arrests were motivated solely by proper concern for the preservation of order and the protection of the general welfare and that they acted in good faith and that the police officers were justified in taking action to prevent what in their opinion, based on reasonable grounds, would provoke a breach of the peace in the form of violence, i.e., that was probable cause for the arrest.

If Judge Spencer is not entitled to absolute immunity, there was ample evidence to show that in making his decision he was motivated by his concept or understanding of the law and the facts. Two years later the Supreme Court of Mississippi came to the same legal conclusion on similar facts. *Thomas* v. *State,* 160 So.2d 657.

If there were no reversible errors in the admission of evidence then this jury verdict would be controlling. Otherwise, Petitioners are merely entitled to a new trial on these issues.

POINT I

The Court Below Correctly Held That There Was No Liability for Damages of the Police Officers Under Petitioners' Common Law Count Which Was a Tort Claim for False Imprisonment if the Officers Acted in Good Faith and Had Reasonable and Probable Cause to Believe That the Statute Was Being Violated.

The Court below in its opinion on this point stated:

> "The doctrine of immunity which has long prevailed with respect to judicial officers, has been extended to other officers of government whose duties are related to the judicial process. Bar v. Matteo, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434, Norton v. McShane, 5th Cir. 1964, 332 F.2d 855, cert. den. 380 U.S. 981, — S. Ct. —, 14 L. Ed. 274; Gregoire v. Biddle, 2nd Cir. 1949, 177 F.2d 579, cert. den. 339 U.S. 949, 70 S. Ct. 803, 94 L. Ed. 1363. In this cause, as in Norton v. McShane, supra, *the doctrine of official immunity protects the police officers from common-law false-imprisonment liability. . . .*" (R. 448-9) (Emphasis added.)

The Court below then held that Mississippi law controlled and that under Mississippi law probable cause was a defense for common-law false arrest and that therefore the trial court's instruction on probable cause was not error. In so doing, the Court below stated:

> "The appellants complain of the trial court's instruction on probable cause, and an objection to it was made and preserved. If the trial court had been correct in its assumption that Section 2087.5 was a valid statute defining a misdemeanor, then the instruction would have been proper. A police officer is permitted to arrest, without a warrant, for misdemeanors committed in his

> presence. . . . The rule followed in Mississippi, which may be the minority rule but which is controlling here, is that a public officer is not charged with the duty of determining at his peril whether a statute is valid when he is acting under it. Golden v. Thompson, 194 Miss. 241, 11 So. 2d 206. Thus the challenged instruction was not improper when given . . . the *conduct of the appellees* would be tested by the situation existing at the time of their action."[3] (R. 452)

The Fifth Circuit Court of Appeals was correct in the above holding that probable cause could be a defense of the police officers when acting under *Section 2087.5.*

There was no question but that Petitioners were congregating in a public place. There was no dispute but that they failed to move on on order of the officers. There was sufficient evidence to support a jury finding that there was reasonable ground for the officers to believe that such a congregation of the fifteen Episcopal preachers was with intent to provoke a breach of the peace and was also under such circumstances that actual violence might be occasioned thereby. There was no question but that the offense was committed in the presence of the arresting officers. The arrests under such circumstances brought them within the terms of *Section 2087.5.*

True, the arrests were made without a warrant. However, Section 2467 of the *Mississippi Code* provides that an arrest for any crime or offense may be made by a policeman of any city. Section 2469 provides that "arrests for criminal offenses, and to prevent a breach of the peace, or the commission of a crime, may be made at any time or place." Section 2470 of the *Code* provides: "An officer or private person may arrest any person without warrant for an indictable offense committed, or a breach of the peace threatened or attempted in his presence."

---

[3] The Court therefore did not hold that there was no liability on the part of the officers for common-law false arrest as a matter of law or direct a verdict for the policemen on these grounds. This issue would be still before the jury if the case is remanded for a new trial. Nor did the Court, as evidently believed by Petitioners, dismiss the complaint as to this count on the ground of lack of jurisdiction. We therefore do not know why Petitioners argue that the Court had jurisdiction under diversity if for no other reason. (The Petitioners' Point IV in their brief, page 33) This is admitted.

Sction 2474 of the *Mississippi Code* provides: "Officers and others who make arrests as authorized, or required by law, shall not be liable on account thereof, civilly or criminally, notwithstanding it may appear that the party arrested was innocent of any offense."

However, we do not place the non-liability of the officers here for false imprisonment solely upon this statute. Probable cause is a common law defense to false imprisonment *both in Mississippi and generally.*

In *Forsythe* v. *Ivey,* Miss., 139 So. 615, plaintiff was arrested for drunkenness in a public place without a warrant. It later developed that he was not drunk but was suffering from some mental and physical temporary disorder. An action for false imprisonment was brought and resulted in a jury verdict for the plaintiff. The Supreme Court reversed the judgment and entered a judgment there for the officers. The officers had requested and been refused an instruction to the effect that if the jury believed that the plaintiff "in the presence of the arresting defendant officers was walking like he was drunk, talked like he was drunk . . . and conducted himself as to lead a reasonable and prudent person to believe that he was drunk, and that. . . (the officers) acting in a reasonable and prudent manner, did believe the plaintiff was drunk, or was about to commit some breach of the peace. . . then they had a right to arrest the plaintiff and put him in jail, and it will be your duty to render a verdict for the defendants, even though the jury may further believe that after the arrest of the plaintiff it developed . . . that the plaintiff was at the time suffering from some mental and physical temporary disorder, or ailment, which caused him to . . . conduct himself as to indicate to and lead a reasonable and prudent person to believe that he was drunk, or that some breach of the peace was threatened or attempted.'' The Supreme Court held the refusal of this instruction error and in reversing the case used the following language:

> ''Under the law, policemen are required to arrest persons without warrants for misdemeanors committed in their presence. Drunkenness in a public place is a misdemeanor . . . in the case of drunkenness, *policemen must act upon appearances, and the evidence in this case clearly presents a case where the policemen were warranted in believing that the plaintiff was drunk at the time of the arrest.*
>
> * * *
>
> ''. . . We think the defendants were entitled to the instruction first hereinabove set out. . . .'' (Emphasis added.)

Two companion cases involving a misdemeanor, i.e., having intoxicating liquor in the possession of the person arrested, are *Baldwin* v. *State,* 167 So. 61, and *Copeland* v. *State,* 30 So.2d 509. In both instances the arrest was made by an officer without warrant on the ground of a misdemeanor committed in his presence although the officer did not know, but could merely infer, that the crime was being committed. The Court in each instance held that if what he saw was sufficient to constitute reasonable grounds to believe that the crime was being committed, that the arrest was legal. In the *Baldwin* v. *State Case,* the Court held:

> "An officer has the right to arrest without a warrant for the commission of a misdemeanor in his presence. Section 1227, Code of 1930. A misdemeanor is being committed in the presence of an officer when he then and there acquires knowledge thereof through one of his senses . . . *'or inferences properly to be drawn from the testimony of the senses.' . . . These facts . . . justified the officer in drawing the inference, from what he had observed, that the bottle in the paper sack contained whisky."* (Emphasis added.)

In the *Copeland* v. *State Case,* the Court stated:

> ". . . the testimony of the sheriff discloses much more than a mere suspicion on his part that a misdemeanor was being committed in his presence and was competent; and that what he saw and observed was sufficient to entitle him to make the arrest. . . ."

Cases holding that probable cause is also a defense to an action for malicious prosecution include: *King* v. *Weaver Pants Corp.,* Miss., 127 So. 718; *Powell* v. *Weiner,* 176 So. 731; *Lenaz* v. *Conway,* 105 So.2d 762.

As stated, this is not a local rule or an isolated holding of the Mississippi court or peculiar to Mississippi. It is the general rule.

This was the rule in this Court prior to *Erie. Seaboard Oil Co.* v. *Cunningham,* 51 F.2d 321, cert. den. 76 L.ed. 557. In *Director General* v. *Kastenbaum,* 68 L.ed. 146, 263 U.S. 25, the Court in discussing an action for false imprisonment stated:

> "The gist of it is an unlawful detention and, that being shown, the burden is on the defendant to establish

> *probable cause for the arrest* . . . Probable cause is a mixed question of law and fact. The Court submits the evidence of it to the jury, with instructions as to what facts will amount to probable cause if proved."

The above case was cited with approval in *Carr* v. *National Discount,* C.A. 6, 176 F.2d 899, and the Court in applying Michigan law stated:

> "One may not be held liable for such arrest unless it was brought about without probable cause . . . The essence of a claim for false imprisonment is that the imprisonment must be false,—that is, without probable cause."

The Illinois law with reference to liability for false imprisonment is stated in *Bucher* v. *Krause,* C.A. 7, 200 F.2d 576, cert. den. 97 L.ed. 1404. The Court stated:

> "Whether the officers were acting *reasonably* when they attempted to place plaintiff under arrest is, under Illinois decisions, one of fact . . . If evidence supporting such a conclusion is present but is controverted or if it will support a contrary inference, then the question must be submitted to the jury."

In Mueller v. *Powell,* C.A. 8, 203 F.2d 797, the Court in discussing the Missouri rule with reference to probable cause justifying an arrest without a warrant stated:

> "What would constitute such a reasonable and probable ground of suspicion is incapable of exact definition, beyond saying that the officer must not act arbitrarily, but must exercise his *discretion* in a legal manner, using all reasonable means to prevent mistakes . . . Appellant's guilt or innocence of the crime for which he was arrested and about which he was questioned was and

> is not the issue in this case . . . The issue was whether there was factual justification or 'probable cause' for the appellees to suspect that appellant had committed the crime. The trial court found there was."

In *Henry* v. *United States,* 4 L.ed.2d 134, 361 U.S. 98, this Court, in discussing an arrest without a warrant, stated:

> "Evidence required to establish guilt is not necessary . . . Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed . . . If the officer acts with probable cause, he is protected even though it turns out that the citizen is innocent."

This would be particularly true where the crime itself was such that the officer could not determine with precision the commission thereof. This would be true in the case of drunkenness. See *Goins* v. *Hudson,* 55 S.W.2d 388. This would certainly be true with reference to a crime the commission of which involves the probability of the occasioning of a later breach of the peace. The question of whether or not a breach of the peace might be occasioned thereby could only be determined by good faith discretion of the trial officer.

In the case of *Wells* v. *Gaspard,* La., 129 So.2d 245, a misdemeanor for which the arrest was made without a warrant was an ordinance prohibiting persons under 18 years from loitering on streets or in public places. Whether or not the crime was actually being committed could not be determined with exactness by the officers. It later developed that the boy arrested was over 18 and was a boy of good reputation with respectable parents. The Court, in affirming a finding of the fact of the trial court that the police officers had reasonable grounds for believing that the boy was committing a misdemeanor in their presence and denying right to damages for false imprisonment, stated:

> "... A police officer cannot be held for damages, even though subsequently the person arrested be found innocent, if the arrest for a misdemeanor be made when the public officer in good faith has probable cause to believe it is being committed in his presence."

Although Petitioners do not contest this holding of the Court with any force we have included it in this brief at some length because of the statement of Petitioners in their brief that the Mississippi rule is "contrary to most jurisdictions." That, as we have pointed out above, is not correct. This is important not only on this question, but is of great importance on the issue of liability under *42 U.S.C. 1983* which we submit must follow the common law tort liability rule.

POINT II

The Court Below Properly Held That 42 U.S.C. 1983 Does Not Abrogate or Destroy the Common Law Doctrine of Judicial Immunity.

The Fifth Circuit in its opinion in discussing this issue held that Judge Spencer should have been granted a directed verdict at the conclusion of the trial.

At common law a judge has absolute judicial immunity against suits for damages when presiding over a court having jurisdiction. The Court below was correct in holding that *42 U.S.C. 1983* did not destroy the judicial immunity of Respondent Spencer.

No question has been raised as to the general jurisdiction of the court presided over by Respondent Spencer. Petitioners had been arrested for a misdemeanor pursuant to *Section 2087.5, Mississippi 1942 Code,* a full copy of which is made Appendix A hereto, and thereunder could have been punished by limited fine and imprisonment in the county jail.

Judge Spencer was the Police Justice and ex officio Justice of the Peace under *Section 3374-103, Mississippi 1942 Code,*[4] by which the City Police Justice is given full power of a justice of the peace in any case arising within the city limits. By Section 1831 a justice of the peace is given general jurisdiction of any crime committed in his district "... whereof the punishment prescribed does not extend beyond a fine and imprisonment in the county jail. . ." Affidavits were immediately filed by the arresting officers with Police Justice Spencer. (For typical affidavit see R. 74).[5]

Bond was available immediately either from the Justice of the Peace (Section 2492) or even before the hearing from the arresting officers (Section 1834). No such bail was requested.

At the trial before Judge Spencer Petitioners were represented by two eminently qualified and capable attorneys. A jury was available and within the rights of Appellee but no jury was requested. (Code Section 1836 and 1839.) Oral evidence was introduced by the prosecution but none of the Appellants testified in their own behalf. The resulting conviction was not only anticipated and anticipatable but patently desired by Petitioners.

The common law immunity of Judge Spencer to civil damages is beyond question. The leading case is *Bradley* v. *Fisher,* 80 U.S. 335, 20 L.ed. 646, where this Court in 1871, speaking through Mr. Justice Field, used the following language:

---

[4] Full copies of this and the following sections of the Code are not attached in that Appellants do not raise this issue.

[5] Even if the affidavits had been ineffective, which they were not, jurisdiction of the court would not have been destroyed, but the same were amendable even in the circuit court on appeal. *Henry* v. *State,* Miss., 154 So. 2d 289, cert. den. 11 L. ed. 2d 604.

> "... The plea, as will be seen from our statement of it, not only sets up that the order of which the plaintiff complains was an order of the Criminal Court, but that it was made by the defendant in the lawful exercise and performance of his authority and duty as its presiding justice. ... If such were the character of the Act, and the jurisdiction of the court, the defendant cannot be subjected to responsibility for it in a civil action, *however erroneous the Act may have been, and however injurious in its consequences it may have proved to the plaintiff*. For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. ...
>
> * * *
>
> "Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed. ...
>
> "... If civil actions could be maintained in such cases against the judge, because the losing party should see fit to allege in his complaint that the acts of the judge were done with partiality, or maliciously, or corruptly, the protection essential to judicial independence would be entirely swept away. ...

"If upon such allegations a judge could be compelled to answer in a civil action for his judicial acts, not only would his office be degraded and his usefulness destroyed, but he would be subjected for his protection to the necessity of preserving a complete record of all the evidence produced before him in every litigated case, and of the authorities cited and arguments presented, in order that he might be able to show to the judge before whom he might be summoned by the losing party—and that judge perhaps one of an inferior jurisdiction—that he had decided as he did with judicial integrity; and the second judge would be subjected to a similar burden, as he in his turn might also be held amenable by the losing party.

* * *

". . . A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter, any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. . . . But, if on the other hand, a judge of a criminal court, invested with general criminal jurisdiction over offenses committed within a certain district, should hold a particular act to be a public offense, which is not by the law made an offense, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction no personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him. . . ." (pp. 649, 650, 651)

The convictions in this case in 1861 by Police Justice Spencer can hardly be criticized when in 1964 the Supreme Court of Mississippi affirmed convictions under very similar circumstances and under the same statute. Cf. *Thomas* v. *State,* 160 So.2d 657.

The Court of Appeals of the Fifth Circuit correctly held that Appellee Spencer should have been granted a directed verdict when the evidence was in. On this issue the opinion of the Court below contains the following language: (R. 447-8)

> "The appellee Spencer filed a motion to dismiss the complaint as to him on the ground that his actions were [fol. 659] judicial and he was immune from any civil liability. The motion was deferred for decision until the trial of the case on the merits. No ruling on the motion was made. The judgment for the appellants made the question unimportant, but we think it is appropriate to say that the motion should have been granted. By the leading case of Bradley v. Fisher, 13 Wall. 335, 20 L. Ed. 646, the immunity was established of judges of courts of superior or general jurisdiction from liability for damages growing out of the performance of their judicial duties. The doctrine has been extended to the judges of all courts. Barr v. Matteo, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed 2d 1434; Yaselli v. Goff, 2nd Cir. 1926, 12 F.2d 396, aff. 275 U.S. 503, 48 S. Ct. 155, L. Ed. 395. The rule applies to city magistrates and municipal judges. Cuiksa v. City of Mansfield, 6th Cir. 1957, 250 F.2d 700, cert. den. 356 U.S. 937, 78 S. Ct. 779, 2 L. Ed. 2d 813; Reilly v. United States Fidelity & Guaranty Co., 9th Cir. 1926, 15 F. 2d 314; 35 C.J.S. 707, False Imprisonment § 44. Such is the law in Mississippi. Bell v. McKinney, 63 Miss. 187. The judicial immunity applies in civil rights actions as

Fifth circuit misunderstood
2 pts to argument - not one
(a) stat unconst
(b) also claim - wilfully conducted

> well as at common law. Norton v. McShane, 5th Cir. 1964, 332 F. 2d 855, cert. den. 380 U.S. 981, — S. Ct. —, 14 L. Ed 24 274. If a judicial officer acts in the clear absence of all jurisdiction and authority he incurs liability for a false imprisonment caused by him. 35 C.J.S. 707, False Imprisonment § 44. *The Mississippi statute, Sec. 2087.5, on its face, was sufficient to justify the action taken by Judge Spencer.* The statute had not then been held invalid.[*] It was subsequently upheld by the Supreme Court of Mississippi in Thomas v. State, 160 So. 2d 657, Farmer v. State, 161 So. 2d 159, and Knight v. State, 161 So. 2d [fol. 660] 521. We think it cannot be said that there was a clear absence of jurisdiction in the appellee Spencer at the time action was taken by him although, since this cause was argued before us, the statute was held *invalid*[6] *as applied to circumstances such as those in this case.* Thomas v. Mississippi, 380 U.S. 524, 85 Ct. 1327, 14 L. Ed. 24 265. See Boynton v. Virginia, 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed. 24 206. A judge should not be put to ~~a correct~~ determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess. We think it was proper to defer a ruling on the motion of the appellant Spencer but it should have been granted when the evidence was in."[7] (Emphasis added.)

It is now thoroughly established that judicial immunity applies in civil rights actions as well as at common law and that *42 U.S.C. 1983* does not abrogate this common law immunity.

---

[6] The statute has never been held invalid on its face. See Appendix B and briefing of this point. Whether it was erroneously and thus unconstitutionally enforced under the circumstances here does not destroy judicial immunity.

[7] Followed by the Fifth Circuit in *Carmack* v. *Gibson,* 363 F. 2d 862 (Adv. Sheets).

The leading case, although actually dealing with legislative immunity, by virtue of its excellent discussion of the history, purpose and intent of *42 U.S.C. 1983* is *Tenney* v. *Brandhove,* 95 L.ed. 1019, 341 U.S. 367. This Court there stated:

> "Did Congress by the general language of its 1871 statute mean to overturn the tradition of legislative freedom achieved in England by Civil War and carefully preserved in the formation of State and National Governments here? Did it mean to subject legislators to civil liability for acts done within the sphere of legislative activity? Let us assume, merely for the moment, that Congress has constitutional power to limit the freedom of State legislators acting within their traditional sphere. That would be a big assumption. But we would have to make an even rasher assumption to find that Congress thought it had exercised the power. These are difficulties we cannot hurdle. The limits of §§ 1 and 2 of the 1871 statute—now §§ 43 and 47 (3) of Title 8—were not spelled out in debate. We cannot believe that Congress—itself a staunch advocate of legislative freedom—would impinge on a tradition so well grounded in history and reason by covert inclusion in the general language before us."[8] (p. 1026-27)
>
> "The principle, therefore, which exempts judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well ordered system of jurisprudence. It

---

[8] The immunity of the judiciary is equally well founded in the common law. *Bradley* v. *Fisher,* supra.

> has been the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country."

This case was followed and applied to judicial immunity in *Francis* v. *Crafts*, C.A. 1, 203 F.2d 809, certiorari denied 98 L.ed. 357. The complaint was filed under Section 1983 against a judge who had allegedly, without notice or hearing, ordered a 17 year old person committed as a defective delinquent. The court in affirming a dismissal of the complaint pointed out that any interpretation of 1983 abrogating judicial immunity even though the defendant acted in good faith in compliance with what he believed to be his official duty and even though the action was not tortious at common law would be ". . . an awesome and unqualified interpretation". In relying on *Tenney* v. *Brandhove,* supra, the Court said:

> "It is clear that the immunity of judges from civil liability for acts done in the course of their official functions is no less firmly and deeply rooted in the traditions of Anglo-American law, reaching back to ancient times. See the learned opinion by Chief Justice Kent in Yates v. Lansing, 1810, 5 Johns., N.Y., 282, tracing the origins of this doctrine of judicial immunity back to the days of Edward III. . . . Referring to the doctrine of judicial immunity from civil suit, Chief Justice Kent observed, 5 Johns. at page 291: 'It is to be found in the earliest judicial records, and it has been steadily maintained by an undisturbed current of decisions in the English courts, amidst every change of policy, and through every revolution of their government. A short view of the cases will teach us to admire the wisdom of our forefathers, and to revere a principle on which rests the independence of the administration of justice.' Further he said, 5 Johns. at page 296: 'Ought

> such a sacred principle of the common law, as the one we have been considering, to be subverted, without an express declaration to that effect?' . . . ." (p. 811)

prosecutor

The last expression on this subject of a Court of Appeals is *Bauers v. Heisel,* C.A. 3, 361 F.2d 581 (1966) (Adv. sheets). There a county prosecuting attorney in New Jersey had procured the indictment of the plaintiff although he was a minor and although the New Jersey statute excised from the prosecutor's responsibility the prosecution of minors. The Court, in affirming that the complaint for damages under the Civil Rights Act should be dismissed, used the following language:

> "Rather than rely on the plethora of cases which have held judicial officers to be immune from suit under the Civil Rights Act,[9] we believe that two maxims, one of statutory construction and the other of judicial restraint, when applied and coupled with Tenney, clearly indicate that judicial immunity was not abrogated by the Act.
>
> "First, *it is well settled that a statute should not be considered in derogation of the common law unless it expressly so states or the result is imperatively required from the nature of the enactment.* Mobile Gas Service Corp. v. FPC, 215 F.2d 883 (C.A. 3, 1954), aff'd, United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332, 76 S.Ct. 373, 100 L.Ed. 373 (1956); American District Telegraph Co. v. Kittleson, 179 F.2d 946 (C.A.8, 1950); Scharfeld v. Richardson, 76 U.S. App. D.C. 378, 133 F.2d 340, 145 A.L.R. 980 (1942). There can be little doubt that the concept of judicial immunity is deeply rooted in Anglo-American law. . . .

---

[9] To this statement the Court cites some 40 to 50 cases upholding the immunity of judicial officers under Section 1983.

> "The statute before us also has no express declaration to that effect; nor does the legislative history adequately support the conclusion that Congress intended to dissolve judicial immunity. . . ." (pp. 586-7)

In the *Bauers* v. *Heisel* Case, supra, the Third Circuit specifically and emphatically overruled its prior decision, before *Tenney*, of *Picking* v. *Pennsylvania R. R.*, 151 F.2d 240,[10] where it had held that the judicial immunity would not be afforded to a justice of the peace. In so doing, the Court stated:

issue not presented

> "We are not alone in our belief that the construction given R.S. § 1979 in Tenney sheds new light on the situation which confronted us in Picking. Although Picking had been the cause of some immediate concern, see Note, 46 Colum.L. Rev. 614 (1946), it was not until after Tenney that its pronouncement on immunity became the object of *wholesale disavowal*. In fact, five circuits explicitly stated that Tenney had in effect overruled Picking. Stift v. Lynch, 267 F.2d 237 (C.A.7, 1959); Cuiksa v. City of Mansfield, 250 F.2d 700 (C.A.6, 1957), cert. denied, 356 U.S. 78 S. Ct. 779, 2 L.Ed. 2d 813 (1958); Kenney v. Fox, 232 F.2d 288 (C.A. 6), cert. denied sub nom. Kenney v. Killian, 352 U.S. 855, 77 S.Ct. 84, 1 L.Ed. 66 (1956); Tate v. Arnold, 223 F.2d 782 (C.A. 8, 1955); Morgan v. Sylvester, 125 F.Supp. 380 (S.D. N.Y., 1954), aff'd, 220 F.2d 758 (C.A. 2), cert. denied, 350 U.S. 867, 76 S.Ct. 112, 100 L.Ed. 768 (1955); Francis v. Crafts, 203 F.2d 809 (C.A. 1), cert. denied, 346 U.S. 835, 74 S.Ct. 43, 98 L.Ed. 357 (1953). . . ." (p. 585)

---

[10] And yet here Petitioners rely almost entirely on this *Picking* v. *Pennsylvania R. R.* See Petitioners' brief page 24-25. The other cases cited are all before *Tenney* and also deal with the sufficiency of complaints charging the Judge with acting corruptly, viciously and willfully.

An interesting case upholding the immunity of judges and predicting that the Third Circuit would overrule *Picking* is a case from the Sixth Circuit, *Kenney* v. *Fox*, 232 F.2d 288, certiorari denied 1 L.ed.2d 66, wherein the Court collects a large number of authorities. This same circuit in the later case of *Puett* v. *City of Detroit, Department of Police*, 323 F.2d 591 (1963), applied the immunity rule to a city judge.

Between *Tenney, supra, and Bauers,* supra, the following cases from practically every circuit have affirmed the judicial immunity under Section 1983: *Byrne* v. *Kysar*, C.A. 7, 347 F.2d 734; *Morgan* v. *Sylvester*, 125 F.Supp. 380, affirmed C.A. 2, 220 F.2d 758, cert. den. 100 L.ed. 768; *Rhodes* v. *Houston*, 202 F. Supp. 624, affirmed C.A. 8, 309 F.2d 959, cert. den. 9 L.ed.2d 719; *Puett* v. *City of Detroit, Department of Police,* C.A. 6, 323 F.2d 591; *Sarelas* v. *Sheehan*, C.A. 7, 326 F.2d 490; *Rhodes* v. *Meyer*, C.A. 8, 334 F.2d 709, cert. den. 13 L.ed.2d 186; *Schoen* v. *Mountain Producers Corporation,* C.A. 3, 170, F.2d 707, cert. den. 93 L.ed. 1095; *Kenney* v. *Fox*, C.A. 6, 232 F.2d 288, cert. den. 1 L.ed.2d 66; *Spires* v. *Bottorff*, 223 F.Supp. 441, cert. den. 13 L.ed.2d 349; *Gabbard* v. *Rose*, C.A. 6, 359 F.2d 182; *Smith* v. *Dougherty*, C. A. 7, 286 F.2d 777, cert. den. 7 L.ed.2d 97. This list is far from exhaustive.

Petitioners in their brief on this issue (pages 19-26) do little more than attempt to make their own analysis of the legislative history on the lines of *Picking* v. *Pa. R. Co.*, C.A. 3, 151 F.2d 240, which, as we have pointed out, has been overruled by that circuit and which cases from all the other circuits refuse to follow since Tenney, which discussed at great length the legislative history. Also there was no reason why Congress could not have expressly overruled the common law on judicial immunity if that had been the decision of the Congress. Certainly it is well settled that a statute would not be construed as being in derogation of the common law unless it expressly so states.

What Petitioners seem to be objecting to primarily is the absolute immunity of judicial officers even though they corruptly or viciously or wilfully violated constitutional rights. This absolute immunity does not have to be relied on by Respondent Spencer here. There is no evidence that even indicates that he did not act in good faith and that at the most made an error of law. Petitioners can point to no statement of any witness in this case which would indicate that the acts of Judge Spencer in reaching his decision was corrupt or vicious or fraudulent or wilful or as a result of conspiracy. Petitioners are in grave error in stating that he "convicted the ministers of a crime for which there was no evidence". As we have heretofore pointed out, police officers testified to facts which justified the conviction under 2087.5; none of the Petitioners testified in their own behalf; and the case was tried on an affidavit of the Chief of Police.

A judge cannot be held liable for civil damages for an error of law or an error of fact. If Judge Spencer could be held liable for an error in interpreting the statute or in applying the statute to the acts of Petitioners here, then every justice on the Supreme Court of the State of Mississippi could be held liable to all of the appellants in the three cases where it made a similar error and the justices of this Court and of any court could be held liable to litigants in prior cases if and when they later overruled a prior decision.

POINT III

The Court Below Properly Held That There Was No Liability of the Police Officers for Money Damages Under 42 U.S.C. 1983 if the Petitioners Deliberately Planned and Provoked the Arrests for Which the Damages Are Sought.

Petitioners take the position that they only recognized that they might be arrested. There was, however, strong evidence that they deliberately planned and conspired to provoke the arrests and to be arrested so that they could publicize themselves as *"witnesses of incarceration"*.

Even under Petitioners' theory, that they merely acted in such a way that arrests were a possibility, there would be no liability for money damages if the officers acted in good faith with probable and reasonable cause to believe that the acts of Petitioners would actually cause a breach of the peace. Petitioners' position seems to be two-fold: (1) That they have an absolute constitutional right to demonstrate under the First Amendment regardless that thereby law and order could not be maintained and (2) that it therefore followed that they had an absolute right to collect money damages from the arresting officers even if their acts deliberately threatened law and order.

Considering their first position: Petitioners rely on *Cooper* v. *Aaron*, 358 U.S. 1, 3 L.ed.2d 5, to the effect that a state statute could not require segregation in the schools on the ground that thereby law and order could be maintained. The case does not hold that the right to demonstrate under the First Amendment is limitless and absolute regardless of the breakdown of law and order.[11]

---

[11] Nor is it in point that a state statute absolutely preventing the alienation of property by the owner thereof was held not justifiable for the purpose of preserving peace under the police power, cf. the other case relied on of *Buchanan* v. *Warley*, 245 U.S. 60, 62 L. ed. 149. It did not hold that the right to demonstrate is limitless and absolute regardless of the breakdown of law and order.

The position of Petitioners is upon an assumption which runs exactly counter to the holdings of this Court. The rule still recognized by this Court was stated in *Breard* v. *Alexandria,* 341 U.S. 622, 95 L.ed. 1233, as follows:

> "The First and Fourteenth Amendments have never been treated as absolutes. Freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses. Rights other than those of the advocates are involved. By adjustment of rights, we can have both full liberty of expression and an orderly life."

The non-absolute character of First Amendment rights was recognized in *Roth* v. *United States,* 354 U.S. 476, 1 L.ed.2d 1498, and in *Konigsberg* v. *State Bar of California,* 366 U.S. 36, 6 L.ed.2d 105.

This Court, speaking through Mr. Justice Douglas, has in *Terminiello* v. *Chicago,* 1949, 337 U.S. 1, 4, 69 S.Ct. 894, 895-896, 93 L.Ed. 1131, while extolling freedom of speech as a vital freedom, stated: "That is why freedom of speech, though not absolute, Chaplinsky v. New Hampshire (315 U.S. 568), supra, pp. 571-572 (62 S.Ct. 766, 86 L.Ed. 1031), is nevertheless protected against censorship or punishment, *unless shown likely to produce a clear and present danger* * *.*"

Other cases from this Court holding that the right to demonstrate and rights of freedom of speech, etc. are subservient to the rights of the state to maintain peace and order include: *Cantwell* v. *Connecticut,* 310 U.S. 296, 84 L.ed. 1213; *Cox* v. *New Hampshire,* 312 U.S. 569, 85 L.ed. 1049; *Feiner* v. *New York,* 340 U.S. 315, 95 L.ed. 295; *Poulos* v. *New Hampshire,* 97 L.ed. 1105, 345 U.S. 395; *Hughes* v. *Superior Court,* 339 U.S. 460, 94 L.ed. 985. See also a collection of cases in *Niemotko* v. *Maryland,* 340 U.S. 268, 95 L.ed. 267.

Therefore, it cannot be said that Petitioners had an absolute right to march as a group into the station even though they thereby caused law and order to be destroyed or broken down. It therefore cannot follow that they have an absolute right for damages under *42 U.S.C.* 1983 for such acts. This statute grants no new constitutional rights.

We can assume that Petitioners had a right to perform any legal act, but it is not a legal act to provoke violence. The performance of a legal act would not destroy the rights of police officers acting under the police power of the state to make an arrest if they, in their honest opinion based on probable cause, believed violence was actually threatened.

However, here the Court below and Respondents here are talking about more than mere acts of the ministers deliberately done in spite of their realization that the police might arrest them. We are talking about an actual plan and conspiracy to provoke a threatened breach of the peace and thereby provoke an arrest—a question of fact for the jury in this case.

The court below in its opinion on this point (R. 452-3, 545-5) used the following language:

> "The appellant Morris was the executive director of the society which organized and supervised the prayer pilgrimage. The court admitted in evidence, over timely objections, his letters and memoranda used in organizing and planning the pilgrimage. From these exhibits and from the testimony of the appellant Morris it could have been inferred that one of the purposes, perhaps the prime purpose of the pilgrimage was to have at least ten of the group jailed in Jackson. The length of time for remaining in jail was discussed. Arrangements in advance for bail bond and for counsel had been made, or so it could have been found. In one of the communications it was said:

> 'All in all, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can.
>
> Perhaps one of our number spoke for us when he said, "About jail—Here I am, send me. I'm not brave but I'm obedient.' "

The evidence would have permitted a finding, not only that being jailed in Jackson was a possibility, but that the participants would go to Jackson for the purpose of procuring their jailing and would so conduct themselves as to assure the achievement of that result. We do not say that this evidence required such a finding; we say that it permitted it. If the appellants' claims can be defeated by a showing of a plan and purpose of being arrested and jailed, then the evidence was properly admitted. We think that such a showing would preclude recovery . . .

* * *

"*The question is not whether the appellants could lawfully dramatize their protests against racial inequality by attempting to eat in a wrongfully segregated lunch room in a bus terminal of an interstate passenger carrier. It goes without saying that they might do so.* Rather the question is whether, in so doing, can they include in their program a planned arrest and confinement and then successfully rely upon such confinement as the basis *for recovery in an action for damages for false imprisonment.* Throughout the common law of torts the maxim, volenti non fit injuria, is applicable. It is applicable to false imprisonment.

35 C.J.S. 712, False Imprisonment § 46 c. one who has invited or consented to arrest and imprisonment should be denied recovery. Hulberstadt v. Nelson, 34 Misc.2d.

> 472, 226 N.Y.S.2d 100; Greene v. Fankhauser, 137 App. Div. 124, 121 N.Y.S. 1004; Stork v. Evert, 47 Ohio App. 256, 191 N.E. 794. The principles set forth in the recent case of State v. Moore, ——Miss.——, 174 So.2d 352, show a recognition of the rule as applicable in Mississippi, although under a factual situation different from the case before us. An earlier decision, and one more nearly in point on its facts, is Williamson v. Wilcox, 63 Miss. 335, where it was said, 'For a purely private injury one cannot maintain a suit when he has consented to the act which produced the injury.'... Since, as is said in Monroe v. Pape, supra, 'Section 1979 [42 U.S.C.A. § 1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.' We think the tort principle of volenti non fit injuria applies to the claim asserted for a civil rights violation under 42 U.S.C.A. § 1983 as well as to the common-law cause of action. . . . It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment." (Emphasis added.)

Petitioners in response thereto would have us assume that this rule is limited to the doctrine of assumption of risk in negligence cases and that there is no such thing as assumption of risk where the person is performing a constitutional act. This of course is not correct. The doctrine of assumption of risk applies when a man is performing the perfectly constitutional act of doing his work, while walking down a city street, etc. *However, the principle relied on here is much stronger than the doctrine of assumption of risk. It is what is called an "inherent defense" to the tort here sued on.*

This is an action for a tort, i.e., false arrest. *Certain torts,* including false imprisonment, *exist only where no consent was given.* In other words, consent is not merely a defense, but the absence of consent is an inherent and integral part of the tort to be proved by plaintiff before commission of the tort can be proved.

See the statement of the rule in *Prosser on Torts,* 2d Ed., Chapter 4, Section 18, p. 82-3, as follows:

> "The consent of the person damaged will ordinarily avoid liability for intentional interference with person or property. *It is not, strictly speaking, a privilege, or even a defense, but goes to negative the existence of any tort in the first instance.* It is a fundamental principle of the common law that volenti non fit injuria—to one who consents no wrong is done. . . . As to intentional invasions of the plaintiff's interests, his consent negatives the wrongful element of the defendant's act, and prevents the existence of a tort. 'The absence of lawful consent,' said Mr. Justice Holmes, 'is part of the definition of an assault.' The same is true of false imprisonment, conversion, and trespass."

For instance, in the law of assault: "The absence of lawful consent," said Judge Holmes, "is a part of the definition of assault." *Ford* v. *Ford,* Mass., 10 N.E. 474. It is also a part of the definition of trespass. It is also part of the definition of rape. Above all, it is part of the definition of false imprisonment.

The rule is announced in *35 C.J.S.,* False Imprisonment, p. 712, as follows:

> "Where a person is instrumental in causing or provoking his own arrest or detention, no liability attaches, as where a warrant, alleged to be illegal, was placed in the hands of an officer at the request of the person against whom it was issued. So one cannot

maintain an action for false imprisonment who by his own conduct or statements induces his arrest under a process not naming him correctly or which is not intended to describe him."

In *Hulberstadt* v. *Nelson,* 226 N.Y.S.2d 100, the Court held:

> ". . . Plaintiff invited the arrest, and he should be denied recovery on that ground alone", citing *Prosser on Torts,* supra.

Petitioners were clearly acting under the doctrine of "civil disobedience." This doctrine was expounded by Thoreau and of course by Gandhi. Laws which a man considers unjust or laws which violate a man's conscience may have the force of the state behind them but under the doctrine of "civil disobedience" a man is called upon to break them. This is the doctrine espoused by Rev. Martin Luther King. However, Petitioners have overlooked part of this doctrine of civil disobedience. If a man in his own conscience feels that he is called upon to break laws, there goes with this theory the fact that he must "submit gladly to the consequences of breaking them."

There is no question but that Petitioners could, to paraphrase the court below, dramatize their protest against racial inequality by going in an integrated group into a bus terminal so long as they did not cause violence, i.e., they could become "witnesses" against racial inequality so long as they did not cause a breakdown of law and order. However, a different proposition arises where they thereby deliberately seek to become "witnesses of incarceration". Perhaps they have a right to do so if they accept the consequences. *A different question is presented when they seek to profit financially therefrom and recover money damages for so doing.*

POINT IV

42 U.S.C. 1983 Does Not Abrogate and Completely Destroy the Limited Immunity or Privilege of Police Officers Acting in Good Faith on Probable Cause. Therefore the Court Below Erred in Holding That There Was Not a Jury Issue as to Whether or Not the Police Officers Acted on Probable Cause in Making the Arrests so as to Absolve Them From Liability for Money Damages Under 42 U.S.C. 1983.

Since Tenney all Circuit Courts of Appeal, except the Fifth Circuit in this case, have held that *42 U.S.C. 1983* does not abrogate the common law limited or partial immunity or privilege of police officers. Most of these decisions are since Monroe v. Pape, ante.

These various Courts of Appeal base their decision upon one of three different reasons or occasionally commingle the reasons. The holdings can be and are justified upon the basis of either of the following grounds:

(a) *The reasoning back of the rule that 42 U.S.C. 1983 does not abrogate the absolute immunity of judges applies with equal force to the common law partial or limited immunity or privilege of police officers.*

The limited or partial immunity or privilege of a police officer is equally as well established as a common law[12] rule as the total or absolute immunity of a judge. See Point I, supra. Particularly see *Barr* v. *Matteo,* 360 U.S. 564, 3 L.Ed. 2d 1434, ante. Tenney construed the 1871 statute as not obliterating the common-law privilege or immunity of legislators. The other cases heretofore cited, Point II, have held it did not destroy the common-law rule of immunity of judicial officers. There is no reason why it should be interpreted any differently as to police officers, i.e., it should not be construed as totally destroying the common-law partial or limited immunity of police officers.

---

[12] It is not "a local rule of immunity unassociated with a generally recognized common-law immunity" which the Court said in *Cohen* v. *Norris,* 300 F.2d 24, could not stand as a defense in a Civil Rights Act case.

(b) *Relief under 42 U.S.C. 1983 is limited to a denial by police officers of due process of law or equal protection of the law.*

Some authorities hold that *42 U.S.C. 1983* only applies where the officers have deprived plaintiff of due process. *Bottone* v. *Lindsley,* C.A. 10, 170 F.2d 705, cert. den. 93 L.ed. 1101. Other cases hold the deprivation by the officers of either due process or equal protection of the laws are within the act. *Moss* v. *Hornig,* C.A. 2, 314 F.2d 89, and cases cited. However, all cases agree that acts of the officers are not within the statute unless there has been either a denial of due process or such discrimination as would deny equal protection of the laws under the Fourteenth Amendment, i.e., the statute does not permit recovery to protect other constitutional rights such as rights under the First Amendment.

There is not involved here any denial by the police officers of either due process or equal protection of the law. An arrest without a warrant *and* without probable cause is a denial of due process, but an arrest without a warrant with probable cause for a misdemeanor is not a denial of due process. Nor is there any suggestion here of any denial by these police officers of Petitioners of the equal protection of the law, i.e., there is no proof that Section 2087.5 of the Code was discriminatorily enforced by the City police. The type of proof necessary to establish such denial of equal protection of the law by police officers is well known. See *Snowden* v. *Hughes,* 88 L.ed. 497, 321 U.S. 1; *Moss* v. *Hornig,* 214 F.Supp. 324; *Wright* v. *Rockefeller*, 376 U.S. 52, 11 L.ed. 2d 512. Cf. *Oyler* v. *Boles*, 368 U.S. 448, 7 L.ed. 2d 446.

This limitation of the applicability of 1983 arises from the language thereof requiring that the plaintiff be subjected to a "deprivation of any rights, privileges, or immunities secured by the Constitution and laws[13] * * *" For the historical background of the holding that rights, privileges and immunities of the Constitution only refer to the due process and equal protection provisions of the Fourteenth and Fifteenth Amendments, see the *Slaughter House Cases*, 16 Wall. 36, 21 L.ed. 394; *Brawner* v. *Irvin*, 169 F. 964; *Wadlergh* v. *New Hall*, 136 F. 941.

(c) *Probable defense and good faith being a common-law defense for police officers, 42 U.S.C. 1983 will not be construed as abrogating the common-law rule.*

Not only is this rule applied in interpreting *42 U.S.C. 1983*, but it is a general rule of construction that no statute will be construed as altering the common-law further than its words import or as making any innovation upon the common-law which it does not clearly and fairly express. *Heard & Company* v. *Krawill Machinery*, 3 L.ed.2d 820, 359, U.S. 297, citing *Shaw* v. *Railroad*, 101 U.S. 557, 25 L.ed. 892, and *Texas, etc. Co.* v. *Abilene Cotton Oil*, 204 U.S. 426, 51 L.ed. 1075 Cf. *Pae* v. *Stevens*, C.A. 9,256 F.2d 208; *Globe* v. *Rutgers Fire Ins. Co.* v. *Draper*, C.A. 9, 66 F.2d 985; *Brotherhood of R. and S. Cl., etc.* v. *Norfolk So. Ry. Co.*, C.A. 4, 143 F.2d 1015.

Prior to a discussion of actual cases holding that *42 U.S.C. 1983* does not totally abrogate the common-law partial immunity of police officers, we call the attention of the Court to a case which discusses the common law immunity of lesser public officials and the public policy which justifies such immunity:

---

[13] There is no question here of any deprivation of Petitioners of any rights under any Federal law in force at that time.

The reason requiring such a qualified privilege or immunity is ably stated by this Court in *Barr* v. *Matteo,* 360 U.S. 564, 3 L.ed. 2d 1434. That case involved an action for libel and slander against a director of the Office of Rent Stabilizaiton.[14] The Court quoted with approval the language of Judge Hand in *Gregoire* v. *Biddle,* C.A. 2, 177 F.2d 579, involving an action for common-law false arrest against arresting officers. The Court in the opinion, speaking through Mr. Justice Harlan, used the following language:

> "The reasons for the recognition of the privilege have been often stated. It has been thought important that officials of government should be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties—suits which would consume time and energies which would otherwise be devoted to governmental service and the threat of which might appreciably inhibit the fearless, vigorous, and effective administration of policies of government. The matter has been admirably expressed by Judge Learned Hand:
>
> "'. . . it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again

---

[14] Although the case involved a suit of defamation, the opinion clearly points out that the rules of law expressed therein apply to civil tort suits generally. The opinion has been so construed in subsequent cases. See *Bershad* v. *Wood,* C.A. 9, 290 F.2d 714; *Norton* v. *McShane,* C.A. 5, 332 F.2d 855 at 858, n. 3.

> the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative * * *.' "

Also before calling the attention of the Court to cases specifically dealing with the partial immunity of police officers, we call the attention of the Court to the inapplicability of *Monroe* v. *Pape*, 5 L.ed.2d 492, 365 U.S. 167, which the Fifth Circuit completely misunderstood. That was a case where the police officers without any statutory authority made an unlawful search and seizure without a warrant, not accompanied by an arrest. We have no fault to find therewith. Acting in direct conflict with state statutes the policemen there invaded the home of the plaintiffs and made a search and seizure without a warrant and they then merely later arrested and detained the plaintiff without a warrant. Under the allegations of the complaint[15] there was no possible justification for or defense for the acts of the police. There was alleged, as the Court pointed out, a clear "misuse" of the power of the officer.

Moreover, Monroe v. Pape makes it clear that the liability under the statute would follow the common-law rule of liability of officers. The Monroe v. Pape opinion on this point concludes with the language: "Section 1979 should be read against the background of tort liability that makes a man responsible for the natural consequences of his action."

---

[15] The complaint had been discussed without trial by the Court of Appeals. 272 F.2d 365.

That is all we are asking here, i.e., that the liability be read only against the background of common-law tort liability of a police officer for false arrest.

The Court below correctly held that immunity was not discussed in the Monroe v. Pape Case. However, it overlooked that it was not involved in that case whatsoever. That was a search and seizure case.

Probable cause is not a ground for immunity for police officers for illegal search and seizure. This lack of probable cause as a partial immunity for an illegal search and seizure is discussed in *Cohen* v. *Norris,* C.A. 9, 300 F.2d 24, where the Court stated:

> "Since it is alleged, with respect to this first overt act, that appellees did not have a search warrant, it follows that the search was unreasonable unless it was made incident to a valid arrest, or was made under exceptional circumstances which dispense with the need of a search warrant * * *"

In a note to the above decision in Cohen v. Norris, supra, there appears the following language:

> " . . . a search not incident to a lawful arrest must rest on a search warrant, probable cause to obtain such a warrant being insufficient. Chapman v. United States, 355 U.S. 610, 615, 81 S.Ct. 776, 5 L.ed.2d 828; Johnson v. United States, 333 U.S. 10, 13-15, 68 S.Ct. 367, 92 L.ed. 436."

As stated, Monroe v. Pape was on appeal from a dismissal of the complaint without trial. Upon reversal the case was remanded and tried resulting in a jury verdict for the plaintiff against the police officers. On motion of the police officers for judgment notwithstanding the verdict the court held that it could not be granted and pointed out the difference between the defense of probable cause and an arrest on probable cause in a case involving searches and seizures. The court in so holding stated:

> " 'The law relating to search and seizure is more restricted than the law relating to arrest. This is because the Constitution of the United States and the Constitution of the State of Illinois expressly provide limitations upon invasions of the privacy of the individual and his home and personal effects.
>
> * * *
>
> " 'Although there may be an arrest without a warrant, upon probable cause, under the laws of Illinois, though the law may be different in other states, there may not be a search of a home without a warrant. * * *' " (221 F.Supp. at 647)

Cf. *McMahan* v. *Draffen*, Ky., 47 S.W.2d 716.

See also *Chapman* v. *United States*, 5 L.ed.2d 828, 365 U.S. 610, and *Johnson* v. *United States*, 333 U.S. 10, 92 L.ed. 436, holding that, except for a search made at the time of and after, a lawful arrest must rest on a search warrant, probable cause to obtain such a warrant being insufficient.

Therefore, in Monroe v. Pape there was not involved the issue here of partial immunity for an arrest if good faith and probable cause is shown.

Nor did the officers here, if the jury find on competent evidence that the officers acted in good faith on probable cause, "misuse" their power. They were not under such circumstances wrongdoers in any normal sense of the word.

Turning now to the various holdings of various circuits in actions under *42 U.S.C. 1983* that are directly in point:

From the *First Circuit* Court of Appeals we call the attention of the Court to:

In *Cobb* v. *City of Malden*, 202 F.2d 701, the Court held that the statute did not destroy a qualified privilege of members of the City Council and other public officers for acts done by them *"in good faith in performance of their official duty as they understood it"*. The Court in so holding used the following language:

> "This is not the first time that a court has been perplexed by the apparently sweeping and unqualified language of the old Civil Rights Act. 8 U.S.C.A. §43 seems to say that every person in official position, whether executive, legislative, or judicial, who under color of state law subjects or causes to be subjected any person to the deprivation of any rights secured by the Constitution of the United States, shall be liable in damages to the person injured. The enactment in terms contains no recognition of possible defenses, by way of privilege, even where the defendants may have acted in good faith, in compliance with what they believed to be their official duty. Reading the language of the Act in its broadest sweep, it would seem to make no difference that the conduct of the defendants might not have been tortius at common law; for the Act, if read literally, creates a new federal tort, where all that has to be proved is that the defendants as a result of their conduct under color of state law have in fact caused harm to the plaintiff by depriving him of rights, etc., secured by the Constitution of the United States.
>
> "Fortunately, Tenney v. Brandhove, 1951, 341 U.S. 367, 71 S.Ct. 783, 95 L.ed. 1019, has relieved us of the necessity of giving the Civil Rights Act *such an awesome and unqualified interpretation.* * * *
>
> "So far as concerns federal tort liability for acts done under color of state law, I think the Supreme Court in effect has held, in Tenney v. Brandhove, that the Act merely expresses a prima facie liability, leaving to the courts to work out, from case to case, the

defenses by way of official privilege which might be appropriate to the particular case.

> " . . . *Hence I take it as roughly accurate generalization that members of a city council, and other public officers not in the exceptional category of officers having complete immunity, would have a qualified privilege, giving them a defense against civil liability, for harms caused by acts done by them in good faith in performance of their official duty as they understood it.* * * *"
> (Emphasis added.)

In *Joyce* v. *Ferrazzi*, 323 F.2d 931 (1963), the Court, in affirming a dismissal of a complaint for damages under the statute against police officers, stated:

> " . . . the plaintiff has failed to make out a case of deprivation of any federally secured right, privilege or immunity. For all that appears the police responded to a call for help from the plaintiff's wife and when she admitted them to the plaintiff's house, observing the plaintiff's conduct to be irrational, even violent, took him into custody using no more force than circumstances warranted. It does not appear that the police made any mistake. *But if they did, not every police error of law or fact arises to the dignity of a deprivation of a federally secured right, privilege or immunity.* Agnew v. City of Compton, 239 F.2d 226, 230, 231 (C.A. 9, 1957), cert. denied, 353 U.S. 959, 77 S.Ct. 868, 1 L.ed. 2d 910 (1957)." (Emphasis added.)

From the *Tenth Circuit* see:

In *Marland v. Heyse*, 315 F.2d 312 (1963), plaintiff had been arrested by police officers on three different occasions without a warrant, and on each arrest he was held for hours and subjected to extensive questioning. No charges were ever filed against him. Allegedly at times the questioning was accompanied by verbal abuse and threats and allegedly on two occasions his request to use a telephone to call an attorney or his mother was denied. The Court held:

> ". . . A jury question was presented as to whether the conduct of the police officers on the different occasions was so arbitrary, unreasonable *and without probable cause* as to subject the plaintiff to a deprivation of rights guaranteed by the Constitution of the United States."

In *Downie* v. *Powers*, 193 F.2d 760, an action for damages was brought on exactly the opposite ground, i.e., that the police of the city deprived Jehovah's Witnesses holding a religious meeting of protection under the law by not keeping peace and preventing the invasion of constitutional rights by citizens interrupting and trying to break up the meeting. The Court held that whether the police officers should have realized that a breach of the peace was reasonably apprehended and protected the Jehovah's Witnesses was a question for the jury, using the following language:

> "When all the evidence bearing upon the action or inaction of the city officials is considered in its totality we think it presented a factual issue of whether they exercised reasonable diligence in the performance of their statutory duties, or whether they abdicated to the mob. The issue was submitted to the jury under proper instructions and their findings have binding effect here, even though as triers of the fact we might have concluded otherwise." [16]

---

[16] See also on liability of police officers for *failure to protect* a negro man and his apparently white wife from violence of others *Bullock* v.

From the *Ninth Circuit* Court of Appeals we call the attention of the Court to:

In *Agnew* v. *City of Compton*, 239 F.2d 226, cert. den. 1 L.ed.2d 910, 353 U.S. 959, plaintiff was arrested by a police officer without a warrant for violation of a city ordinance forbiding the engaging in business of auctioneering without a permit. As a matter of fact the plaintiff was arrested while auctioning his own goods in his own store "as an isolated transaction". The charges were dropped against him. The Court, in denying the right to damages under the Civil Rights Act, held:

> " . . . it would appear that, at most, appellant's arrest was wrongful because the arresting officers misunderstood the ordinance. This would not amount to a deprivation of basic civil rights. *No one has a constitutional right to be free from a law officer's honest misunderstanding of the law or facts in making an arrest.*"[17] (Emphasis added.)

In *Beauregard* v. *Wingard*, 362 F.2d 901, the plaintiff was arrested on bookmaking charges. The plaintiff alleged that he was so arrested because of certain political attacks made by plaintiff on the arresting officer and that his civil rights were violated. The jury brought in a verdict of probable cause for the arrest. The Court, in holding that the plaintiff could not recover under *42 U.S.C. 1983* even

---

Tamiami Trail Tours, Inc., C.A. 5, 266 F.2d 326. Here the police were using their best judgment and best effort to protect Petitioners from anticipated violence being wilfully provoked by them.

[17] This holding was not repudiated in the later case of *Cohen* v. *Norris*, C.A. 9, 300 F.2d 24. That was a search and seizure case and the Court merely corrected one statement that it had made in the opinion in *Agnew* to the effect that under the Civil Rights Act it was necessary that the act be wilful. This correction was made in view of the *Monroe* v. *Pape* holding. On the other hand, since *Cohen* v. *Norris* the 9th Circuit has again affirmed the primary holding of *Agnew*. *Beauregard* v. *Wingard*, ante.

though his innocence was subsequently established in the criminal case, used the following language:

> "Although the circumstances under which an arrest without probable cause gives rise to a claim under the Civil Rights Act may not yet be clearly established, see, e. g., Note; The Civil Rights Act of 1871: Continuing Vitality, 40 Notre Dame Law., 70, 80-84. (1964), it should in any event be clear that *where probable cause does exist civil rights are not violated by an arrest* even though innocence may subsequently be established."

From the *Seventh Circuit* Court of Appeals we call the attention of the Court to:

Jennings v. *Nester,* 217 F.2d 153. A conviction at the first criminal trial was reversed and at the second trial plaintiff was accorded all constitutional guarantees. The Court dismissed the complaint against local police officers holding that there was no denial of equal protection of the law, stating "Although it alleges improper acts on the part of the defendants, there is nothing to indicate that every citizen of Illinois is not potentially subject to the same treatment." In dismissing the complaint as against the police officers the Court, in holding that there was no cause of action under 42 U.S.C. 1983, also held: "In determining whether or not plaintiff's constitutional rights have been deprived, we must look at everything that transpired. It is obvious from the complaint that as he stands today, *the plaintiff has been accorded due process* as required by the Fourteenth Amendment."

In *Smith* v. *Dougherty,* 286 F.2d 777, cert. den. 7 L.ed. 2d 97, an action was brought under *42 U.S.C. 1983* against a judge and a sheriff and Chicago police officers charging them with depriving plaintiffs of their constitutional and civil rights in connection with an allegedly unconstitutional extradition to stand trial in Michigan on a charge of robbery. The Court, in dismissing the complaint, used the following language:

> "It appears to us that this case is governed by our holdings in Stift v. Lynch, 7 Cir., 1959, 267 F.2d 237; Cawley v. Warren, 7 Cir., 1954, 216 F.2d 74; and Truitt v. State of Illinois, 7 Cir., 1960, 278 F.2d 819; and cases cited therein.
>
> "... This Court further held, that no action under the civil rights statutes lay against the Sheriff as no purposeful and systematic discrimination against a class of persons (of which plaintiffs were members) had been shown. Nether has any been shown in the case before us.
>
> "In Jennings v. Nester, 7 Cir., 1954, 217 F.2d 153, which involved police officers, we pointed out that the Federal civil rights statutes were not enacted to discipline local law-enforcement officials."

From the *Eighth Circuit:*

In *Mueller* v. *Powell,* 203 F.2d 797, the Court held that if the arrest was made by the officers in such a way that it was lawful under state law if it was made on probable cause then there was no liability under the Civil Rights Act for deprivation of due process of law and if also the procedure prescribed by the state afford the character of due process contemplated by the Federal Constitution. The Missouri law was to the effect that an officer was justified in making an arrest without a warrant, for a supposed murder, although no felony had actually been committed, but is suspected, "*and* there is reasonable or probable grounds to suspect that the person arrested committed the crime". The Court pointed out "since . . . the Missouri procedure;

if followed, is synonymous with due process under federal law, we may use as the test of lawfulness of appellant's arrest the requirements for a lawful arrest under the state law."

The trial court had found that there was probable cause which was binding in the federal court action. The Court therefore held "If the procedure prescribed by the state actually affords the character of due process contemplated by the federal Constitution, and is followed, there is no denial of the right under the federal Constitution . . ."

> "Appellant's guilt or innocence of the crime for which he was arrested and about which he was questioned was and is not the issue in this case. The trial court expressed no opinion on that question. We, of course, express none. The issue was whether there was factual justification or 'probable cause' for the appellees to suspect that appellant had committed the crime. The trial court found there was. . . ."

In *Pritchard* v. *Downey,* 326 F.2d 323, there was an arrest of civil rights demonstrators. The Court affirmed the district judge in denying any civil liability under *42 U.S.C. 1983,* stating: "Judge Young in his opinion has very satisfactorily demonstrated that substantial evidence supports his finding that probable cause existed for the arrest of each of the plaintiffs . . . An arrest is justified if probable cause exists therefor. *The burden of proving probable cause for arrest is considerably lighter than that involved in sustaining a conviction.*" The Court then pointed out that there was no denial of equal protection or due process stating: "The record shows that a large number of persons other than plaintiffs were arrested on this day. All were processed as rapidly as possible."

From the *Sixth Circuit:*

In *Hurlburt* v. *Graham,* 323 F.2d 723, a complaint for damages againt police officers was dismissed and the dismissal affirmed, the Court stating:

> "The police officers did not become liable under the Civil Rights Act merely because they investigated the accident, served a ticket on the plaintiff which required him to appear before the justice and testified in the case. The officers were not responsible for what subsequently took place in the trial of the case. Cuiksa v. City of Mansfield, supra. Nor do we think that giving a false version of the accident (which plaintiff claims the officers and other defendants did) would bring the case under the Civil Rights Act. If the rule were otherwise, any disgruntled litigant who lost his case in the state court could get a retrial in the federal court by alleging that his opponent gave a false account of the controversy."

In *Gabbard* v. *Rose,* 359 F.2d 182 (1966), the Court followed *Agnew* v. *City of Compton,* 239 F.2d 226, supra, in its holding that "No one has a constitutional right to be free from a law officer's honest misunderstanding of law or facts in making arrest."

From the *District Court in Illinois:*

In *Bowens* v. *Knazze,* 237 F.Supp. 826 (1965), the Court followed the holding of *Monroe* v. *Pape* that liability under 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." Under this rule the Court held that such defenses as self-defense or "unforeseeability" of deprivation of civil rights protected the officer acting in good faith. The Court also held that an officer must be judged by the decisions of the courts at the time of the incident complained of:

> "In order for the Civil Rights Act to apply, the acts complained of must result in a deprivation of rights secured by the Constitution. *Under the general principles of tort liability, it is sufficient that a reasonable man would have foreseen this result.* However, a subsequent determination that the officer's conduct resulted in a deprivation of constitutional rights does not mean that the result was foreseeable and that the officer's conduct was therefore tortious.
>
> "The Civil Rights Act created a new type of tort: the invasion, under color of law, of a citizen's constitutional rights. The test of tortious conduct in an ordinary tort case is, as a general rule, whether at the time of the incident the defendant was negligent, whether he failed to act as a reasonably prudent man. . . .
>
> "In ordinary tort litigation, we allow a jury to find that a defendant committed a tort when, looking back to the event, it finds that the defendant acted unreasonably. . . .
>
> "The tort created by the Civil Rights Act . . . is determined by the courts. If that standard has not yet been enunciated by a court in a manner which makes its applicability to the incident at hand clear, the potential defendant cannot be expected to conform his conduct to it. *Unlike the requirements of a statute or the judgment of the community* which can be applied retroactively, *the retroactive application of the judgment of a court as to the requirements of the Constitution*—based not on community standards but on legal reasoning—*would place a defendant in an impossible position.*
>
> *"It would require law enforcement officers to respond*

> *in damages every time they miscalculated in regard to what a court of last resort would determine constituted an invasion of constitutional rights,* even where, as here, a trial judge—more learned in the law than a police officer—held that no such violation occurred.
>
> * * *
>
> "The applicability of the Civil Rights Act to the facts of this case must be determined with reference to the standards of constitutional protection current at the moment the defendant acted. . . .
>
> "*So long as the defendant's conduct stemmed from his reasonable belief as to the requirements of the law and was not unreasonable in any other* way, he cannot be held responsible—under the standard of liability set forth in Monroe v. Pape—for the deprivation of plaintiff's rights. 'No one has a constitutional right to be free from a law officer's honest misunderstanding of the law or facts in making an arrest'. Agnew v. City of Compton, 239 F.2d 226, 231 (9 Cir. 1956), cert. den. 353 U.S. 959, 77 S.Ct. 868, 1 L.Ed.2d 710 (1957). Thus, *the action of a police officer cannot be tortious when the officer proceeds on the basis of his reasonable, good faith understanding of the law and does not act with unreasonable violence or subject the citizen to unusual indignity. . . .*"

We now turn to the unconvincing and illogical method by which the Fifth Circuit Court of Appeals arrived at its flat conclusion that "the defense of immunity is not available to the police officer appellees in this case". (R. 450)

In our opinion the Court erred in this respect by confusing absolute immunity with partial or limited immunity and was merely holding, or, if it had been called to its attention, would have merely held that there was no absolute immunity if the acts were not done in good faith with probable cause but were malicious or wilful acts.

We say this because the Court first attempted to base its decision on its own decision in *Norton* v. *McShane,* C.A. 5, 332 F.2d 855, cert. den. 14 L.ed.2d 274. In that case an action under *42 U.S.C. 1983* and under the common law had been brought against certain federal officers charging them with unlawful arrest without probable cause, abuse while being detained, horrible and nauseating mistreatment and malicious assault and battery, together with a conspiracy to deprive plaintiffs of equal protection of the law. "The plaintiffs apparently are seeking relief under both common law and the Civil Rights Acts. . . ." As to the common law cause of action, the Fifth Circuit sustained the district court in dismissing the complaint coming to the conclusion that "by the great weight of authority, law enforcement officers are immune from civil suits (even) based on alleged malicious acts." In taking up the cause of action under the Civil Rights Act the court only actually held that it was not applicable, as it clearly is not, to federal officers. It did not pass on any limited or partial immunity of state officials under Section 1983. Any remark made in the opinion thereasto is pure dicta.

The Fifth Circuit in the present case, after discussing this common law rule of absolute immunity of police officers, which Respondents are not even attempting to rely on here, then said: (R. 449)

> "The rule *may* be otherwise where a claim is asserted under a Civil Rights Act. In Norton v. McShane, supra, it was said: 'While it is clear that the common-law immunity afforded legislative and judicial officers applies in suits under the Civil Rights

> Acts, there remains much *uncertainty*[18] as to the *extent* to which immunity for subordinate executive officials applies, if it applies at all'. . . .''

In this case now before the Court, the court below did not quote the additional language in McShane:

> ''In view of our conclusion later in this opinion that the instant suits are not within the purview of the Civil Rights Acts (because against federal officers) we do not decide at this time *the scope* of official immunity under those statutes. We need only say that the doctrine *may* be given more limited application in those suits than it has been given at common law.'' (dicta)

Thus, McShane did not hold that there was no immunity whatsoever for police officers under the Civil Rights Act and cannot be interpreted as so holding, but merely as expressing some doubt as to the extent thereof. As heretofore pointed out, Respondents here are not seeking to be allowed to establish proof that would justify absolute immunity but merely limited and partial immunity if probable cause is proved.

The court below in its opinion then proceeded to state (R.449): ''The uncertainty (as to the scope of the immunity under the Civil Rights Act) then existing (referring to the time of the decision in McShane) still prevails. 15 Am.Jur.2d 452, et seq., Civil Rights, Section 67.''

This text is pitifully inadequate and reflects no such uncertainty. It only cites two cases dealing with the liability under the Civil Rights Act of law enforcement officers. both of which held them not liable. The text also recognized there could be a distinction between absolute immunity and limited immunity, citing *Nelson* v. *Knox,* C.A. 6, 256 F.2d 312, to the effect that the mayor, city manager and commissioners did not enjoy "complete immunity". It did not point out that the Nelson v. Knox case did hold that these officers had "a qualified privilege, giving them a defense against civil liability for harm caused by acts done by them in good faith in performance of their official duty as they understood it."

---

[18] No authority was cited in McShane for this statement.

Turning to the only other cases upon which the Fifth Circuit based its decision in this case:

The court stated: (R. 449)

> "By dictum in *Hoffman* v. *Halden,* 9th Cir. 1959, 268 F.2d 280, it was *indicated* that by the Civil Rights Act liability was imposed on state officers for acts within as well as without the scope of their authority if done under color of law."

With this we can cheerfully accede. In fact it is usually required that the act be within the scope of the authority in order to create liability. It was for Monroe v. Pape to extend it to acts beyond the authority. The case did not even indicate, much less hold, that acts performed in good faith by an arresting officer on probable cause would justify damages. The Hoffman Case merely held that a complaint should not be dismissed where it alleged "The County Health Officer and his deputy wilfully failed to act in good faith in forceably taking plaintiff to a place of detention . . . and that they wilfully refused to advise court that they had ignored order and were detaining plaintiff against his wishes and that they made a false return of citation . . . etc." Naturally the complaint stated a cause of action.

The court below in its opinion (R. 449-50) then cites

Monroe v. *Pape,* supra, to the effect that the act of the officers did not have to be performed wilfully in order to create liability. This again we can cheerfully admit. However, there is a vast difference between any holding that an act not performed wilfully but performed in good faith under a statute valid on its face on probable cause was indefensible.

The inexplicable remark of the court below in the opinion is (R. 450): "Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses."

We submit that no such holding is inherent in Monroe. How could it be inherent in Monroe when, in Monroe, there was no good faith and there was no reliance upon a state statute but the acts were performed in defiance of state statutes. Nor was there in Monroe any case of immunity or partial immunity involved. This is to some extent admitted by the Fifth Circuit which stated that Monroe "did not expressly rule upon the question of immunity." However, as pointed out, supra, there is no immunity involved in search and seizure cases where the search and seizure is without a warrant and where it is not incident to any arrest. The rejection of such a defense in the search and seizure case does not ". . . imply(s) rejection of such a defense as a general proposition." In fact the distinction in the search and seizure cases clearly recognizes that it is not like normal arrest cases and the defenses are different.

This, as heretofore pointed out, is borne out by the next case cited by the court below in its opinion (R. 450), *Cohen* v. *Norris,* C.A. 9, 300 F.2d 24, supra. In that case, another search and seizure case, after the court had held that probable cause for search and seizure was not a defense by one acting without a warrant except under very exceptional circumstances and that probable cause for an arrest was not a defense unless the search and seizure was made incident to the arrest. The language used by the court below in stating that Monroe v. Pape necessarily implies rejection of such a defense as a general proposition is taken bodily from Cohen v. Norris where it is talking about only a search and seizure case. The court in holding that in Tenney there was no immunity in this type of case very carefully limited to search and seizure cases, stating: "If the language (in Tenney) in so ruling may be considered to be broad enough to include the acts of police officers *in making searches and seizures*, it must be regarded as not controlling in view of Monroe v. Pape." If this were a search and seizure case, this position would not be taken.

We again call the attention of the Court to the holding in *Chapman* v. *United States*, 5 L.ed.2d 828, 365 U.S. 610, and *Johnson* v. *United States*, 333 U.S. 10, 92 L.ed. 436, to the effect that in the absence of very special circumstances a search *not incident to a lawful arrest* must rest on a search warrant, probable cause to obtain such a warrant being insufficient.

The only other case cited by the court below (R. 450) on this issue is again its own decision and again a search and seizure case, *Davis* v. *Turner*, C.A. 5, 197 F.2d 847. Also, again the court merely held that the complaint stated a cause of action where it alleged that the sheriff entered and searched plaintiff's store without warrant of any kind, found nothing unlawful, but seized and arrested her, struck her and put her in jail and refused to tell her the crime for which she was charged. Naturally, it stated a cause of action. The opinion did not preclude any defenses that could be proved.

The court below therefore cited no authority that substantiated its holding. Petitioners cited none.

We therefore submit that Respondents have a right to have submitted to the jury on a new trial the defense of good faith and probable cause not only to the count on common law false arrest, but also to the count based on *42 U.S.C. 1983*, i.e., establish a partial or limited immunity if they can establish such facts to the satisfaction of the jury.

POINT V

The Court Below Was in Error in Holding That the District Court Made Reversible Error in the Admission of Evidence.

The trial of this case in the district court before a jury resulted in a jury verdict for the Defendants. The cause was reversed by the Fifth Circuit on the ground that the district court made errors in admitting evidence. We submit that the evidence admitted did not constitute reversible error on the part of the District Judge and that this cause should be remanded to the district court and the original judgment therein reinstated.

There was no error in allowing one witness to be asked whether he personally agreed or disagreed with nine statements allegedly tenets of the Communist Party as set forth in the Daily Worker of May 26, 1928.

The witness Jones was, on cross-examination, asked questions as to whether he personally agreed or disagreed with certain statements allegedly read to him from the Daily Worker. (R. 105-111) The Court required him to express his agreement or disagreement with the statements read to him. He stated that he did agree with eight of the tenets and had merely not made up his mind as to one. This witness was then further examined with reference thereto by his own attorney. He was given the opportunity to and did testify that he was not a Communist and disagreed with the Communist Party principle of uniting all workers against the master class and that capitalism means racial oppression and communism means social and racial equality. The court sustained the objection to the introduction into the record of this issue of the Daily Worker. It therefore allowed only the questions of whether the witness agreed or disagreed with the statements read to him. Neither the questions nor his answers thereto prejudiced him in any way, particularly in view of his full opportunity to state that he was not a communist. The pertinency of inquiry as to what extent, if any, demonstrations and riots are instigated by groups infiltrated by Communists has been fully recognized.

In Mississippi wide latitude is permitted in the cross-examination of a witness. In *Jones* v. *State,* Miss., 76 So. 2d 201, the Court stated:

> ". . . When a witness voluntarily takes the stand and testifies, he is subject to cross-examination and so long as there is no abuse of the privilege of cross-examination and no prejudice results therefrom except such prejudice as might arise from disclosing the truth, the severity of the cross-examination is no ground for a reversal."

Full and complete cross-examination and great latitude therein is approved by the federal courts. *Gardner* v. *United States,* C.A. 10, 283 F.2d 580; *Dickson* v. *United States,* C.A. 10, 182 F.2d 131; *Young Ah Chor* v. *Dulles,* C.A. 9, 270 F.2d 338; *Fisher* v. *United States,* C.A. 9, 231 F.2d 99; *Bass* v. *United States,* C.A. 8, 326 F.2d 884, cert. den. 12 L.ed.2d 176. Bias or prejudice of the witnesses or motives for his acts or reasons for his actions are proper subject of cross-examination. *Asgill* v. *United States,* C.A. 4, 60 F.2d 776; *United States* v. *Standard Oil Company,* C.A. 7, 316 F.2d 884.

Moreover, the trial judge has broad discretion in the matter of admission or exclusion of evidence. *National Lab.*

Rel. Bd. v. Donnelly Garment Co., 91 L.ed. 854, 330 U.S. 219; *Chapman & Dewey Lumber Co.* v. *Hanks*, 106 F.2d 482; *Hannan* v. *United States*, 131 F.2d 441; *Texas General Indemnity Company* v. *Daniel*, C.A. 5, 283 F.2d 898.

> *There was no error in allowing admission in evidence of the tension caused by the arrival of the Freedom Riders in Jackson approximately a month before the occurrence here.*

The same general principles outlined above are applicable to this issue.

The court below was, we submit, in error in stating that "It is not shown that the earlier incidents (the Freedom Riders) were sufficiently close in point of time to have any relation to the situation with which we are dealing." (R. 450) The issue was the mental attitude of or emotional tension of the citizens of Jackson at the time. If what had occurred a month before was stil in the minds of the populace of the city generally and still influenced them, which was testified to by the witnesses, then it could not be remote on this issue.

The court below was also in error in saying that "No connection was shown between the Freedom Riders and the Prayer Pilgrims, and the appellants denied any connection." (R. 450) On the other hand, the record is replete with statements of Petitioners that they were following up the activities of the Freedom Riders and supporting them.

In the Directive written by witness Morris to all of the participants on June 28th he stated: "I am keeping as closely in touch with the situation as I can so that we may be adequately advised what the best course of action is to the extent that our pilgrimage relates to the Freedom Rides . . . our pilgrimage will in all likelihood be viewed as another or the last of the Rides." (R. 188-9)

This witness also himself testified: "I have not denied we would consider front line fighters in Mississippi to be the Freedom Riders, which we were suporting although we were not Freedom Riders." (R. 174)

This witness also testified:

> "A. It is exactly as said there. The primary purpose of the trip was to indicate concern for segregation in the church, but it also concerned those seeking freedom of travel, and at that particular time in the history of Mississippi I suspect this might have meant the Freedom Riders or it might be anyone.
>
> "Q. Did you have in mind anyone other than Freedom Riders when you wrote that?
>
> "A. Anyone who wished to travel at that time, but we had particularly in mind the Freedom Riders. We make no bones of while we were not Freedom Riders, we support the Freedom Riders. I mean you don't have to pry to get this. I will say this frankly.
>
> * * *
>
> "Q. To what did you refer in the letter of June the 16th when you said, 'While present difficulties may have been overcome by September, dangers inherent in the early stages of the pilgrimage must be frankly faced'?
>
> "A. As I indicated yesterday, being an interracial group traveling in the South, we know that about half of the population of Mississippi is White and small percentages of these persons would object to an interracial group, and, therefore, there might be cause for tension among some of the White people who would object to the nature of our group.
>
> "Q. In that statement when you use the phrase

'present difficulties may have been overcome,' weren't you there referring to the Freedom Riders?

"A. I was—." (R. 168-9)

Thus, Petitioners themselves freely admitted the pertinency of the previous Freedom Riders on the tension in the heart of small segments of the Mississippi population and their connection with this movement.

Moreover, previous racial incidents and animosities were held to be material and relevant in *Knight* v. *State*, Miss., 161 So.2d 521, where the Mississippi Supreme Court took judicial notice of the history of Mississippi and of the United States back as far as 1776, considering it relevant and material on the issue of probability of violence. The court stated: "History shows that there has always been friction between different ethnic and religious groups in varying degrees. Compare the intense animosity which has existed between Jew and Arab, Greek and Turk, and Irish and English."

Evidence cannot be immaterial or irrelevant if the court can or will take judicial notice of the same facts. This Court in *Garner* v. *Louisiana*, 368 U.S. 157, 7 L.ed.2d 207, held that this type of evidence should be introduced in the lower court rather than have the appellate court under the necessity of taking judicial notice thereof.

Again, we point out that this evidence was admissible because of the issue to which it applied, i.e., the mental and emotional attitude of and the tension of the group in the terminal at the time of this occurrence. This evidence of occurrences a relatively short time prior thereto resulting in high tension among the people of the City of Jackson, and such tension still continuing to the date of the occurrences here according to the testimony, was admissible to show the justification of the police officers in their belief that the presence of Petitioners under the circumstances here could result in violence.

These minor objections to the introduction of two isolated types of evidence does not, we submit, constitute reversible error and require a retrial of this entire case. The case was submitted to the jury under proper instructions and no objection of the Court below or Petitioners here is made thereto. Again, in the language of *Jones* v. *State,* supra: "... so long as ... no prejudice results therefrom (strenuous cross-examination) *except such prejudice as might arise from disclosing the truth,* the severity of the cross-examination is no ground for a reversal."

Conclusion

We have strictly limited our argument herein to the legal questions involved. We apologize for the length of this brief. We felt, however, that the decision here could be an important precedent and that the effects thereof could be far-reaching and that this justifies the full development of the legal points involved because:

(1) Police officers can be freely and easily subjected to suits in federal courts in each instance where an arrest was made during demonstrations, disturbances and riots, the volume of such litigation in the federal courts, particularly since Watts and through the tumultuous summer of 1966, could completely clog the federal district courts and later the appellate courts.

(2) The police officers should be held without defense in suits for arrests brought under 42 U.S.C. 1983 unless even months and years thereafter they can establish in each individual case of arrest that the arrested was actually guilty of the offense under a valid statute, regardless of probable

cause to believe that the accused was so guilty and regardless of reliance on a statute valid on its face, then police officers would be harassed to the extent that police action will be difficult to obtain. Why would a police officer take such a chance? An effective police force when needed would be jeopardized. Police officers are poorly paid. A judgment against them would destroy their present and future financial stability and ability to support their families. The need for adequate police protection and action will increase as the Civil Rights Movement changes to a Black Power Movement.

We respectfully urge the Court to give serious consideration to the preservation of the limited common law immunity of police officers if justified under the facts of a particular case and preserve to such police officers their right to a jury trial on such issue.

Respectfully submitted,

THOMAS H. WATKINS,
ELIZABETH WATKINS HULEN GRAYSON,
Suite 800 Bankers Trust Plaza
Building,
Jackson, Mississippi,
Counsel for Respondent.

Of Counsel:

WATKINS & EAGER,
Suite 800 Bankers Trust Plaza
Building,
Jackson, Mississippi.

Certificate of Service

The undersigned of counsel certifies that a true and correct copy of the foregoing Brief was this day mailed by United States mail, postage prepaid, to Carl Rachlin, 38 Park Row, New York, N.Y. and Melvin L. Wulf, 156 Fifth Avenue, New York, N.Y., attorneys of record for Petitioners.

This the — day of November, 1966.

Thomas H. Watkins
Of Counsel for Respondents.

APPENDIX A

7. Any person violating any section of this act shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned in the county jail for not exceeding thiry (30) days, in the discretion of the court, or the offender may be punished by both such fine and imprisonment.

8. This act shall take effect and be in force from and after its passage (approved June 11, 1964).

SOURCES: Laws, 1964, ch. 238, §§ 1-8.

REFERENCES: 12 Am Jur 2d 664, 684, Breach of Peace and Disorderly Conduct §§ 2 et seq., 28 et seq.

§ 2087.5 Disorderly conduct—may constitute felony, when.

1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in or upon shore protecting structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in subsection (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refusing to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof,

shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment: and if any person shall be guilty of disorderly conduct as defined herein and such conduct shall lead to a breach of the peace or incite a riot in any of the places herein named, and as a result of said breach of the peace or riot another person or persons shall be maimed, killed or injured, then the person guilty of such disorderly conduct as defined herein shall be guilty of a felony, and upon conviction such person shall be imprisoned in the Penitentiary not longer than ten (10) years.

2. The provisions of this act are supplementary to the provisions of any other statute of this state.

3. If any paragraph, sentence, or clause of this act shall be held to be unconstitutional or invalid, the same shall not affect any other part, portion or provision of this act, but such other part shall remain in full force and effect.

SOURCES: Laws, 1960, ch. 250, §§ 1-3.
CROSS REFERENCES: §§ 2046.5, 2087.7, 2087.9, this title.
REFERENCE: See generally, 17 Am Jur 187, Disorderly Conduct.

Annotations

Words as disorderly conduct. 48 ALR 87.

Failure or refusal to obey police officer's order to move on, on street, as disorderly conduct. 65 ALR 1152.

JUDICIAL DECISIONS

The constitutionality of this section was challenged in Bailey v Patterson, 199 F Supp 595, in which it was held, in view of the involvement of factual issues, that the Federal court would withhold action until the State courts should pass upon the issues; but this decision was vacated in 369 US 31, 7 L ed 2d 512, 82 S Ct 549, which, affirming that no state may require racial segregation of interstate or intrastate transportation facilities, held that the claim that the statutes so requiring are not unconstitutional was frivolous, and therefore not one in which a three-judge Federal district court is required. The appellants, however, were held to lack standing to enjoin criminal prosecutions under the breach of peace statutes, not having been prosecuted, or threatened with prosecution, under them.

This section is violative of the Fourteenth Amendment to the Federal Constitution. Bailey v Patterson, 206 F Supp 67.

This provision is not so vague and uncertain as to be void. Thomas v State, — M —, 160 So 2d 657.

Whether a specific act is a breach of the peace can only be determined in the light of circumstances. Thomas v State, — M —, 160 So 2d 657.

Any error in refusal to permit identification of an accused by race is rendered immaterial by his presence in court. Knight v State, — M —, 161 So 2d 521.

A "freedom rider" failing to obey a police officer's order, given because of antagonism displayed toward him by other persons present, to leave a bus terminal's waiting room for whites justifies his arrest under this section, notwithstanding that his presence was in the exercise of a constitutional right. Thomas v State, — M —, 160 So 2d 607; Knight v State, — M —, 161 So 2d 521.

Persons arrested for violating ordinances by parading without a permit, in an antisegregation demonstration, held not entitled to habeas corpus in Federal court on ground that mass arrests had so invaded state courts as to deprive them of an adequate remedy under state law. Brown v Rayfield, 320 F2d 96, cert den 375 US 902, 11 L ed 2d 143, 84 S Ct 191.

§ 2087.7. Disorderly conduct—interference with business, customers, invitees, etc.

1. It shall be unlawful for any person or persons, while in or on the premises of another, whether that of an individual person, or a corporation, or a partnership, or an association, and on which property any store, restaurant, sandwich shop, hotel, motel, lunch counter, bowling alley, moving picture theatre or drive-in theatre, barber shop or beauty parlor, or any other lawful business is operated which engages in selling articles of merchandise or services or accommodation to members of the public, or engages generally in business transactions with members of the public, to:

> (1) prevent or seek to prevent, or interfere with, the owner or operator of such place of business, or his agents or employees, serving or selling food and drink, or either, or rendering service or accommodation, or * * *.

APPENDIX B

Section 2087.5 Is Not and Has Never Been Held Unconstitutional on Its Face. Nor Can It Be Retroactively Held That the Enforcement Thereof Valid at the Time Deprived Petitioners of Constitutional Rights.

While there is no doubt that 2087.5 can be enforced so as to deprive defendants of their constitutional rights, as any statute can be, the statute itself is not unconstitutional per se and no court has so held, i.e., it is valid on its face and can be enforced if the arrest thereunder is justified by the facts.

Attached hereto as Appendix A is a complete copy of Section 2087.5 of the *Mississippi 1942 Code*. In the Complaint here, R. 1, there is no allegation that the statute is unconstitutional and relief was not sought on that ground. That was an afterthought—and yet now Petitioners' chief reliance, repeated throughout their brief, is "The fact that the statute under which the arrests were purportedly made was unconstitutional on its face is sufficient to require a directed verdict against the policemen even though the formal holding of unconstitutionality was not made by this court until after the arrests." (Their brief, p. 18)

The most cursory reading of Section 2087.5 reflects that it specifically describes what constitutes a misdemeanor thereunder. It does not make it a misdemeanor merely to fail to obey an order of an officer to disperse and move on. There must be present also (1) a gathering "with *intent* to provoke a breach of the peace" and (2) a gathering "under circumstances that such a breach of the peace *may be* occasioned thereby." Thus, the statute clearly does not require any actual disturbance of the peace by the person arrested or any intent to disturb the peace, but merely either an intent to provoke other parties to breach the peace or that acts might occasion someone else to breach the peace.

The offense of "breach of the peace" is a well defined common law offense. "Breach of the peace is a common law offense . . . The offense may consist of acts of public turbulence or indecorum in violation of the common peace and quiet . . . or of acts such as tend to excite violent resentment or to provoke or excite others to break the peace . . . Accordingly, where means which cause disquiet and disorder, and which threaten danger and disaster of the community, are used, it amounts to a breach of the peace although no actual personal violence is employed . . ." 11 C.J.S., Breach of the Peace, p. 818.

The Mississippi Statute is not so vague and uncertain as to be unconstitutionally void and unenforceable. " 'The Constitution does not require impossible standards'; all that is required is that the language 'convey sufficiently definite warning as to the prescribed conduct when measured by common understanding and practices.' United States v. Petrillo, 332 U.S. 1 * * * that there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. . . ." *Roth* v. *United States,* 354 U.S. 476, 1 L.ed.2d 1498, and cases cited. Cf. *Jordan* v. *DeGeorge,* 341 U.S. 225, 95 L.ed. 886; *Chaplinsky* v. *New Hampshire,* 315 U.S. 568, 86 L.ed. 1031; *United States* v. *Ragen,* 314 U.S. 513, 86 L.ed. 383; *United States* v. *Harriss,* 347 U.S. 612, 98 L.ed. 989; *Winters* v. *New York,* 333 U.S. 507, 92 L.ed. 840.

Breach of the peace statutes like the Mississippi statute have consistently been upheld as constitutional, and convictions upheld where the particular facts justified the enforcement thereof.

In 1961 when the acts here complained of occurred the applicable expressions of this Court included:

In *Feiner* v. *New York,* 95 L.ed. 295, 340 U.S. 315, a student was addressing a crowd, including Negroes, through a loud-speaker system from a box on the sidewalk and making derogatory remarks concerning public officials and indicating that Negroes should rise up in arms and fight for equal rights. The speaker himself was not disorderly. However, the police noted the excitement which was aroused by his speech and reached the conclusion that it might result in a fight. One of the officers requested the speaker to get off the box. He did not accede to the request and continued talking. The officer then arrested the speaker without a warrant and he was charged with a misdemeanor under the New York breach of the peace statute which was practically identical with the Mississippi statute. This was an appeal from a criminal conviction and under the facts, admittedly stronger there than here, the Court upheld the conviction. This Court in *Feiner* clearly upheld the constitutionality of such a statute and affirmed a conviction where under the particular facts and circumstances a breach of the peace might produce violence in others. In that case the Court held:

> ". . . the trial judge reached the conclusion that the police officers were justified in taking action to prevent a breach of the peace. * * * They found that the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare. * * * 'The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. *It includes not only violent acts but acts and words likely to produce violence in others. . . .*' "

In *Cantwell* v. *Connecticut,* 84 L.ed. 1213, 310 U.S. 296, the Court reversed a criminal conviction under the particular facts there present but carefully pointed out: "One may, however, be guilty of the offense *if he commit acts or make statements likely to provoke violence* and disturbance of good order, even though no such eventuality be intended." The Court also carefully limited the constitutional rights of the individual to the superior rights of the state to prevent disorder, stating: "When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears the power of the state to prevent or punish is obvious."

No statute similar to the Mississippi statute has been held unconstitutional on its face or per se by this Court:

Opposing counsel cite only cases where the courts have held that under particular facts there involved the statutes were unconstitutionally enforced, i.e., that there was no proof of facts which constituted a breach of the peace and thus criminal convictions were merely reversed. That is all that was held in *Brown* v. *Louisiana,* 15 L.ed.2d 637, 383 U.S. 131.

True, in *Edwards* v. *South Carolina,* 372 U.S. 229, 9 L.ed.2d 697,[1] involving proof of nothing more than a peaceful expression of unpopular views, the court held the statute vague and indefinite. It did so, however, because it had been interpreted by the Supreme Court of South Carolina in such a way as to be vague and indefinite. The Supreme Court of South Carolina had held that the offense was "not susceptible of exact definition" and that it included any expression of views which "stirred people to anger, *invited public dispute, or brought about a condition of unrest.*" Admittedly the common law offense of breach of the peace is not that broad and a "condition of unrest" is vague and indefinite.

Similarly, in *Cox* v. *Louisiana,* 379 U.S. 536, 13 L.ed.2d 471,[2] the Court again held that a breach of the peace statute was vague and indefinite and could not stand, but again solely because the Supreme Court of Louisiana had broadly defined a breach of the peace as "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, *to disquiet.*" Here, again, the definition was much broader than the common law offense of breach of the peace and the language included in the definition thereof is vague and indefinite.

The Supreme Court of Mississippi, on the other hand, has held the statute constitutional and in so doing, in affirming a criminal conviction, has based it upon there having been proof that *actual violence* could have been provoked. In *Thomas* v. *State,* 160 So.2d 657, the Supreme Court of Mississippi thought there was sufficient evidence to justify a finding that "if the officer had not acted in ordering defendant to move on there would have been *violence.*" They merely held that the Mississippi statute could be enforced in a situation where city officials in good faith believe that disorder and violence were imminent, i.e., narrowly construed the statute.

---

[1] Involving merely reversal of criminal convictions.

[2] Involving merely reversal of criminal convictions.

True, the convictions in *Thomas* v. *State* were reversed, but they were not reversed on the ground that the Mississippi statute was unconstitutional on its face or that there could be no arrest under it where city officials in good faith believed or the record showed that violence was imminent. The reversing opinion is reported *Thomas* v. *State,* 14 L.ed.2d 151. In its per curiam opinion this Court merely cited by name *Boynton* v. *Virginia,* 364 U.S. 454, 5 L.ed.2d 206. The Boynton Case did not even involve a breach of the peace statute, but a "trespass" statute. The Court in Boynton did no more than hold that the *Interstate Commerce Act* prohibited the officers enforcing the trespass statute at the request of the terminal restaurant manager, i.e., that the defendants had a right given them by a *federal statute* to remain in the white portion of the station and therefore could not be guilty of trespass. The Court in Boynton specifically pretermitted any constitutional question.

Officers of the City of Jackson are under an injunction not to enforce unconstitutional state statutes requiring segregation of public facilities, including those of carriers. *Bailey* v. *Patterson,* 323 F.2d 201, certiorari denied 11 L.ed.2d 609. They are not under an injunction from enforcing the breach of the peace statute if a breach of the peace actually occurred or was imminent in a facility of a terminal.

This Court has never held that there can be no arrest for a breach of the peace in the terminal of a carrier *regardless of the facts or circumstances and regardless of imminent violence.* The situation then resolves itself to one of fact as to whether or not under the Mississippi statute there could be arrest *if violence from others was imminent* or if the arrest was made by the officers in good faith believing that violence was imminent and not for the purpose of preventing integration. This is a jury issue.

Nor can it be said as a matter of law that violence from others towards Episcopal ministers could not possibly be imminent. In the August 26, 1966, edition of "Time" under the heading of "Religion" there appeared the following article:

> "Like many other priests, nuns and ministers, Sister Mary Angelica, 41, a second-grade teacher at Sacred Heart School in Melrose Park, last month joined Martin Luther King's march for integrated housing through the streets of Chicago. In the heavily Catholic Gage Park neighborhood, an angry youth in a jeering mob yelled, 'This is for you, nun!' and threw a brick at her. The missile struck Sister Angelica on the back of her head, opened a cut that soaked her black veil and white collar with blood. Unashamed, the crowd cheered."

The distinction between laws which are void and a nullity on the one hand and on the other hand laws which are fair on their face but nevertheless can be or are being administered in such a way as to result in deprivation of civil rights is well recognized. For example, statutes requiring segregation in schools are void on their face. *Bush* v. *Orleans Parish School Board,* 187 F.Supp. 42, motion denied 5 L.ed.2d 806, 365 U.S. 569. However, pupil placement statutes are usually valid on their face but can be unconstitutionally applied under given circumstances. *Flax* v. *Potts,* 204 F.Supp. 458, affirmed 313 F.2d 284. Cf. *Rice* v. *Elmore,* C.A. 4, 165 F.2d 387, cert. den. 92 L.ed. 1151, 333 U.S. 875.

And note the difference between *Murdock* v. *Pennsylvania,* 87 L.ed. 1292, 319 U.S. 105, and *Douglas* v. *Jeannette,* 87 L.ed. 1324, 319 U.S. 157. Both cases involved a city ordinance of the City of Jeannette which prohibited the solicitation of orders for merchandise without first procuring a license from the city authorities. In Murdock the Court reversed some criminal convictions where the ordinance was applied to the dissemination by Jehovah's Witnesses or religious tracts, holding the ordinance as so applied an unconstitiutional invasion of constitutional rights. However, in *Douglas* this Court under the same circumstances refused to grant a general injunction against the enforcement of the ordinance stating that a federal court should not" . . . attempt to envisage in advance all the diverse issues which could engage the intention of state courts and prosecution of Jehovah's Witnesses for violations of the present ordinance . . . by a decree saying in what circumstances and conditions the application of the city ordinance will be deemed to abridge freedom of speech and religion."

> *While criminal convictions can be reversed retroactively, liability for money damages cannot be imposed retroactively.*

When the acts here complained of took place the applicable law, as expressed by this Court, was found in *Cantwell* v. *Connecticut* and *Feiner* v. *New York*, supra. A finding by this Court now that officers could not make an arrest if those arrested were not themselves violent if the officers had reasonable grounds to believe that violence in others was imminent could not, we believe, be retroactively applied so as to *impose liability for money damages* on police officers who were acting in good faith at the time. Police officers are not attorneys and do not have attorneys by their side advising them. The question in this case is not whether or not under the facts here they acted erroneously. Good faith errors of law or fact do not impose liability on police officers.

Where a criminal statute is later held totally unenforceable because unconstitutional on its face or in conflict with a later federal statute, this Court has held with great reluctance that a criminal conviction prior to the passage of the federal statute will be retroactively reversed. In *Hamm* v. *Rock Hill*, 13 L.ed.2d 300, and *Bell* v. *Maryland*, 12 L.ed.2d 822, the Court held in suits which were pending when the law was changed that the conviction must be reversed but on the theory that "* * * there can be no legal conviction nor any valid judgment pronounced upon conviction unless the law creating the offense be at the time in existence."

That, however, is the exact opposite of the situation here. Can a change in decisions or rules or interpretation of statutes make a person civilly liable for acts which were legal when performed and by which he incurred no liability when performed? This is a case of attempt to create liability by construction of statutes by courts after the act was performed.

"The overruling of previous decision by a court . . . may work perspectively but will not be permitted to retroact * * * as where contracts are made or rights acquired in reliance on the construction of a constitutional provision or a statute by an earlier decision, which construction is afterwards changed by an overruling decision." *21 C.J.S.*, Courts, 329. Cf. *Jackson* v. *Harris*, C.A. 10, 43 F.2d 513; *Douglass* v. *Pike County*, 25 L.ed. 968; *Reppel* v. *Board of Liquidation*, 11 F.Supp. 799; *Safarik* v. *Udall*, 304 F.2d 944, cert. den. 9 L.ed.2d 164; *Swan Island Club* v. *White*, 114 F.Supp. 95, affirmed 209 F.2d 698.

Unquestionably the police officers here saw that Petitioners themselves were not being violent. Unquestionably they acted in reliance on the interpretation of such a statute as in Cantwell v. Connecticut, supra, that there was a violation of the persons arrested were committing acts "likely to provoke violence" or when there was a clear and present danger of a disturbance of the public safety and order. Should this Court now interpret the statute as not authorizing an arrest for provoking violence by another, then the statute would be retroactively construed to the injury and damage of these policemen and thereby deprive them of the right of making a decision as to whether or not to arrest. Certainly the officers had a choice whether to arrest or not. They acted under the assumption, as they had a right to do, that the breach of the peace statute was legal and valid and that there could be arrests without any violence on the part of the person arrested if their nonviolent acts probably would lead to a breach of the peace by someone else. The Court below pointed out that these policemen were "acting in Mississippi . . . in good faith under a state statute which they were entitled to presume to be valid". (R. 449)

We thus have a situation where if justified by the facts the statute could be enforced. Whether or not the statute was properly enforced in a particular case is a question of fact. If the police officers acted erroneously and without what this Court would call sufficient cause or probable cause, this would justify this Court in reversing criminal convictions but would not, we submit, justify the imposing of money damages on the police officer who, acting in good faith, made an error in exercising his best judgment and discretion.

Police officers are immune from common law tort liability if *acting in good faith* under a state statute which they were entitled to presume to be valid and acting under facts and circumstances under which in good faith they believed the statute could be enforced. See Point I hereof. The rule is the same under *42 U.S.C. 1983*. See Point IV hereof.

Moreover, there is a well established common-law rule that a public officer acting in reliance on a statute afterwards declared to be even invalid on its face does not incur any civil liability to one injured by his previous acts if he is thereby deprived of rights and it works a hardship on him personally.

This is, as pointed out by the court below, the Mississippi rule. See *Golden* v. *Thompson*, 11 So.2d 906, where the court held: (syl.)

> "Officials of consolidated school who acted in good faith reliance on statute permitting consolidated schools to collect tuition fee from high school students did not incur personal liability by excluding from school students who failed to pay fee required by order of school board, regardless of whether such statute, the constitutionality of which had not been judicially determined, was actually invalid."

True, the Mississippi court said that in so holding it was adopting the minority rule. We think the court was confused in so stating and meant it was following an exception to the general rule. Its basis therefore was a citation of *16 C.J.S.* Constitutional Law, Sec. 101, subdivision c, p. 479.[3] A most casual reading of this section of C.J.S. shows that it is dealing only with cases where the statute was held void on its face and a complete nullity. A well established exception is noted. On page 480 no conflicting rule is stated to the text statement that:

---

[3] The opinion erroneously said p. 290.

> "Also, the rule that an unconstitutional law is a nullity cannot be applied to work hardship and impose liability on a public officer who, in performance of his duty, has acted in good faith in reliance on the validity of a statute before any court has declared it invalid. . . ."

The Mississippi case of *Golden* v. *Thompson* is cited thereto. Many other authorities are cited thereto.

For example, by cases cited to the above quotation from the text, it is held that tax collectors are not personally liable for tax moneys collected by them without protest under a statute subsequently declared unconstitutional, citing *Anniston Mfg. Co.* v. *Davis,* C.A. 5, 87 F.2d 773, affirmed 81 L.ed. 1143, and *Lincoln Mills of Alabama* v. *Davis,* C.A. 5, 89 F.2d 1012.

The Mississippi rule, as so stated in the text, is followed by Idaho, Illinois, Oklahoma, Tennessee, Texas, Utah, California, and New York. See also the application of the rule by the federal courts prior to Erie, i.e., *Cudahy Packing Co.* v. *Harrison,* 18 F.Supp. 250, appeal dismissed 102 F.2d 981, where the court announced the rule as follows:

> ". . . Plaintiff invokes the generality, 'An unconstitutional law is no law.' It is sufficient to say that the general language invoked cannot be applied to work a hardship upon a public officer who, in the performance of his duty, has acted in good faith, in reliance upon the validity of a statute and before any court has found that the statute is invalid."

The federal courts freely recognize qualifications of any rule of absolute retroactive invalidity of statute. In the case of *Chicot County Drainage District* v. *Baxter State Bank,* 84 L.ed. 329, 308 U.S. 371, the defendant pled res adjudicata based on a decree of the federal court under a federal statute in bankruptcy providing for "municipal-debt readjustments". After the decree was entered the

Act of Congress was declared unconstitutional. The Court, in holding in spite of this fact that the prior decree was res adjudicata, used the following language:

> "The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. . . . It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified. . . ."

The Chicot case was cited with approval and followed in *J. A. Dougherty's Sons* v. *Commissioner of Internal Rev.*, C.A. 3, 121 F.2d 700, where the court held:

> "Although it was formerly held that an unconstitutional statute is a nullity ab initio . . . more lately it has been recognized that the consequences of action taken or restricted in obedience to the requirements of a statute which subsequently is declared unconstitutional are to be appraised and adjudged in the light of

> the compulsion exerted by the statute prior to its determined invalidity. . . . The subject taxpayer is under compulsion to pay due regard to the requirements of the statute until its invalidity has been authoritatively adjudicated. . . ."

Similarly here the police officers were under compulsion and duty to enforce the statute until its invalidity had been authoritatively adjudicated.

The Third Circuit similarly cited and followed the Chicot case in *Phipps* v. *School Dist. of Pittsburgh,* 111 F.2d 393.

Cf. *Lone Star Motor Import, Inc.* v. *Citroen Cars* Corp., C.A. 5, 288 F.2d 69.

Moreover, as stated, the C.J.S. text and the cases thereunder are dealing with statutes which are later declared to be unconstitutional on their face or per se and a nullity. They do not deal with cases where by later decisions the courts merely changed the rulings as to the enforcement thereof, i.e., where courts later by decision enlarged the rules as to what is an unconstitutional enforcement of the statute. The rule as to such change of or new decisions is stated in *21 C.J.S.* Courts, p. 329, as follows:

> "The foregoing general rule as to an overruling decision having a retroactive effect is subject to the well-settled exception that the construction of the law, as given by the overruling decision, may work prospectively but will not be permitted to retroact so as to impair the obligations of contracts entered into, or injuriously affect vested rights (i.e., immunity or privilege) acquired, in reliance on the earlier decision * * * and this rule has been held to apply to the construction of taxation statutes. . . ."

See the announcement of the rule in *Jackson* v. *Harris,* C. A. 10, 43 F.2d 513, as follows:

> "There is a well settled exception to this general rule that, where contracts have been entered into or rights acquired upon the faith of a decision, they cannot be imparied by a change of construction made by

> a subsequent decision. Moore-Mansfield Co. v. Electrical I. Co., 234 U.S. 619, 623, 34 S. Ct. 941, 58 L. Ed. 1503; Douglass v. County of Pike, 101 U.S. 677, 687, 25 L. Ed. 968; Green County v. Conness, 109 U.S. 104, 3 S. Ct. 69, 27 L. Ed. 872; New Buffalo v. Cambria I. Co., 105 U.S. 73, 26 L. Ed. 1024; Nickoll v. Racine C. & S. Co., 194 Wis. 298, 216 N.W. 502, 504; Wilkinson v. Wallace, 192 N. C. 156, 134 S. E. 401, 402; Hoven v. McCarthy Bros. Co., 163 Minn. 339, 204 N. W. 29; 15 C. J. 960, § 358. See also Tidal Oil Co. v. Flanagan, 263 U. S. 444, 451-452, 44 S. Ct. 197, 68 L. Ed. 382."

Cf. *Douglass* v. *Pike County,* 25 L.ed. 968; *Safarik* v. *Udall,* 304 F.2d 944, cert. den. 9 L.ed.2d 164; and cases cited to the notes to the above text.

When this question has been raised the federal courts have consistently held that *42 U.S.C. 1983* would not be construed as imposing liability in the form of money damages upon an officer who in the performance of his duty acted in good faith in reliance on a statute valid on its face.

In *Striker* v. *Pancher,* C.A. 6, 317 F.2d 780, a civil action for damages under Section 1983 was brought against a sheriff who advised a prisoner to plead guilty so as to obtain a lesser sentence and the plaintiff did plead guilty without counsel. At the time of this advice it had never been held that a person accused of larceny in the state court had a constitutional right to counsel. It had been held that this was not a constitutional right in *Betts* v. *Brady,* 86 L.ed. 1595. This ruling was later overruled in *Gideon* v. *Wainwright,* 9 L.ed. 2d 799. However, the advice was given before Gideon. The Court, in holding that civil liability must be viewed in the *light of the law at the time the act was committed,* used the following language:

> "It must also be kept in mind that at the time these events occurred (1952) the law as established by the Supreme Court was that a person accused of larceny in a state court had no constitutional right to counsel. Betts v. Brady has since been overruled, and the law as announced in the later case must be viewed as the law in the prior period. But we think this does not

> mean that failure to appoint counsel in a larceny case in 1952 was such a deprivation of a constitutional right as to subject the state authorities to personal liability for damages under the statute here involved. . . . We keep in mind that we are not considering the validity of the judgment of conviction by reason of the failure to furnish the defendant the benefit of counsel. Such failure, although in a background of good faith, nevertheless invalidates the judgment. . . . Our question is a different one, namely, whether, in addition to invalidating the judgment of conviction, such failure also automatically constitutes a violation of the civil rights statute, under which this civil action for damages was instituted. We think such a result does not automatically follow and does not follow here."

In *Bowens* v. *Knazze,* D.C. Ill., 237 F.Supp. 826, the court pointed out that any retroactive imposition of liability on police officers would "require law enforcement officers to respond in damages every time they miscalculated in regard to what a court of last resort would determine constituted an invasion of constitutional rights." The Court then stated:

> ". . . Unlike the requirements of a statute or the judgment of the community which can be applied retroactively, the retroactive application of the judgment of a court as to the requirements of the Constitution—based not on community standards but on legal reasoning—would place a defendant in an impossible position.
>
> "It would require law enforcement officers to respond in damages every time they miscalculated in regard to what a court of last resort would determine constituted an invasion of constitutional rights, even where, as here, a trial judge—more learned in the law than a police officer—held that no such violation occurred.
>
> * * *

> "The applicability of the Civil Rights Act to the facts of this case must be determined with refernce to the standards of constitutional protection current at the moment the defendant acted. . . .
>
> "So long as the defendant's conduct stemmed from his reasonable belief as to the requirements of the law and was not unreasonable in any other way, he cannot be held responsible—under the standard of liability set forth in Monroe v. Pape—for the deprivation of plaintiff's rights. . . . *Thus, the action of a police officer cannot be tortious when the officer proceeds on the basis of his reasonable, good faith understanding of the law and does not act with unreasonable violence or subject the citizen to unusual indignity. . . .*"

The court below in holding that under the Mississippi rule as expressed in Golden v. Thompson, supra, that there was no common-law liability for false arrest where the officer acted in good faith in reliance upon a state statute subsequently declared invalid stated that: ". . . the authorities are not uniform as to whether a public officer can be held civilly liable for acting under the authority of a state statute subsequently held invalid. Miller v. Stinnett, 10th Cir. 1958, 257 F.2d 910." (R. 452)

The case of *Miller* v. *Stinnett*, C.A. 10, 257 F.2d 910, did point out a conflict but in so doing cited only a few authorities holding an officer civilly liable for arrests made under statute subsequently declared invalid where the statutes were held invalid on their face or per se and were a complete nullity. In the Miller Case itself, however, the statute was not held unconstitutional on its fact but merely unconstitutionally applied by the officer and the court pointed out: "There is good and respectable authority for saying that an arrest made by a police officer for acts committed in his presence in violation of an ordinance valid upon its face, is privileged and not actionable for subsequent declaration of invalidity," citing not only the Mississippi authority but cases from Texas, Tennessee, Illinois and Michigan. True, the court in that case reversed the lower court, but the lower court had dismissed the complaint as failing to state a cause of action. The reversal was on the ground, and only on the ground, that "While a detention made in good faith reliance on an ordinance valid on its face, but invalid or inapplicable in fact may be privileged . . . We think the stated facts susceptible to the permissible inference that the arrest and detention was not made in good faith reliance on the ordinance, but instead for the purpose of harassment to serve selfish ends, thus defeating privileged detention . . . In short, we think the appellant stated a case for the trier of the facts." On reversal and remand of the Miller Case the complainants had the burden of proving the allegations of the complaint. The court did not preclude the defense of good faith.

The court below refused to recognize good faith as a defense to actions under *42 U.S.C. 1983*. Its only authority therefor was the statement that "Inherent in the Monroe holding is the principle that good faith and reliance upon the state statute subsequently declared invalid are not available as defenses." (R. 450)

There is no basis whatsoever for any such assumption on the part of the court below. The Monroe Case dealt with actions of the police officers not only not based on any state statute or in reliance on any state statute, but in direct conflict with state statutes.

The Mississippi rule as expressed in *Golden* v. *Thompson*, supra, is no a local rule not recognized in other states. There is no federal authority in coflict therewith. We again refer the Court to Striker and Bowens, supra, involving actions under *42 U.S.C. 1938*.

We also refer the Court to the decisions from the Supreme Court of the United States cited in *Jackson* v. *Harris*, 43 F.2d 513, supra, in support of the rule that where contracts have been entered into or rights acquired upon the faith of a decision they cannot be impaired by a change of construction made by a subsequent decision. The rights here acquired were the rights to immunity if the acts were done in good faith upon probable cause.

Petitioners rely primarily on *Smith* v. *Allwright*, 321 U.S. 649, 88 L.ed. 987. In that case an action under 42 U.S.C.

1983 was brought by a Negro against election judges for failure to permit him to cast a ballot in a primary election. "The refusal is alleged to have been solely because of the race and color of the proposed voter." The complaint was dismissed in the court below without trial on the basis of a prior decision of the Supreme Court. The action of the election judges was based on a resoluton of the Executive Committee of the Democratic Party to the effect that white Democrats and none other might participate in the primary. This Court reversed its prior ruling and held that where the primary is by law made an integral part of the election machinery that this resolution of the Executive Committee of the Democratic Party had the effect of a state statute and was void on its face. It therefore merely reversed the lower court in dismissing the complaint. The case can be distinguished on three grounds: (1) *The resolution*, held a statute, *was void on its face* in specifically denying to Negroes their constitutional right to vote. (2) *The question of the retroactive effect of the change of new decision of the Supreme Court was not raised.* (3) The case was remanded for a trial, although it was apparently admitted that the refusal was solely because of the race and color of the proposed voter. If so, there would be no immunity of any kind. There is no common-law immunity under any circumstances for deliberate denial of the right to vote because of color. There was not involved in that case the question of immunity of police officers or judicial officers.[4]

---

[4] The other three cases relied on by Petitioners, *Lane* v. *Wilson*, 83 L. ed. 1281, 307 U.S. 268; *Nixon* v. *Herndon*, 273 U.S. 536, 71 L. ed. 759; and *Myers* v. *Anderson*, 238 U.S. 368, 59 L. ed. 1349, can all be distinguished on the above grounds.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 79

ROBERT L. PIERSON, *et al.*, *Petitioners*,

—v.—

J. L. RAY, *et al.*, *Respondents.*

No. 94

J. L. RAY, *et al.*, *Petitioners*,

—v.—

ROBERT L. PIERSON, *et al.*, *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONERS IN CAUSE NO. 79 AND RESPONDENTS IN CAUSE NO. 94

CARL RACHLIN, Esq.
150 Nassau Street
New York, New York 10038

MELVIN WULF, Esq.
156 Fifth Avenue
New York, New York
Attorneys for Petitioner

STEPHEN M. NAGLER, Esq.
Of Counsel

INDEX

PAGE

I. Respondents do not rebut the conclusion that Congress modified the common law immunity of the judiciary to suits for damages 2

II. Did petitioners consent to the arrest? 3

III. Respondents improperly interpret the claim of petitioners as being based solely on the later declaration of unconstitutionality in *Thomas* v. *Mississippi* 5

IV. Probable cause for the arrests herein has improperly been admitted as a defense to plaintiffs' causes of action 7

V. Respondents' factual statements 9

VI. CONCLUSION 10

TABLE OF AUTHORITIES

Cases:

Abernathy v. Alabama, 380 U. S. 447 (1965) 6

Cox v. Louisiana, 379 U. S. 536 (1965) 6

Feiner v. New York, 340 U. S. 315 (1951) 6

Golden v. Thompson, 194 Miss. 241, 11 So. 2d 206 8

PAGE

Nixon v. Herndon, 273 U. S. 536 (1927) 6

Smith v. Allwright, 321 U. S. 649 (1944) 6

Thomas v. Mississippi, 380 U. S. 564 (1965) 5, 6, 8

United States Constitution:

Section 1983 .... 5, 8

Miscellaneous:

Prosser on Torts (3rd ed.), Section 12 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 79

ROBERT L. PIERSON, *et al.*,

Petitioners,

—v.—

J. L. RAY, *et al.*,

Respondents.

No. 94

J. L. RAY, *et al.*,

Petitioners,

—v.—

ROBERT L. PIERSON, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONERS IN CAUSE NO. 79 AND RESPONDENTS IN CAUSE NO. 94

I.

Respondents do not rebut the conclusion that Congress modified the common law immunity of the judiciary to suits for damages.

Respondents never deal with the real question before this Court—what did the 1871 Congress do? References to Black Power, or Watts, or Martin Luther King, or Communist infiltration do not help at all. Perhaps those words—and all the emotions that lie behind them—would be relevant to what a 1966 Congress would be likely to do when faced with choices between the individual and the official. But the issue before this Court is the meaning of the 1871 Congress. And that Congress (as is shown in the portions of our brief which respondents never meet) intentionally and knowingly gave harsh remedies against state officials.

What did that Congress do about the common law immunity of judges? It overrode it for state judges, knowingly and over the explicit objections of opponents.

In many cases of statutory interpretation, analysis of the debate merely indicates a few opinions as to meaning of ambiguous language. "The rest is silence." And so the Court is not helped much by such debate. But in the matter before this Court today, no speculation is required. The language is clear. Judges' liability is covered explicitly in the debate (as it had been in 1866). Everyone, opponents and proponents, said that judges would be liable. No doubt can seriously exist as to this fact. Whatever the merits may be for judicial immunity in other cases, it would be rewriting this law to find such immunity here.

We add that in our view this means liability for judges for knowingly or willfully depriving one of equal rights.

No argument is made, nor can it be made, that Congress has not the power to hold judges liable for knowing wrongs. No deep incursion into civil war history is needed to explain the mind of the earlier Congress. In just such cases as are before us today, certain local judges played their roles, together with the police, in denying equal rights. Whatever the facts, the police arrest and the judges convict. This is the wrong Congress intended to correct. We urge that that is the case before us and is encompassed within the intent of Congress.

Contrary to what respondents contend (brief p. 37), Police Justice Spencer does have to rely upon an absolute immunity from being sued for knowingly and willfully depriving persons of their constitutional rights. Petitioners' proof with respect to Judge Spencer was cut off by the trial court. The jury verdict was, of course, tainted by the admission of improper evidence. The decision of the Fifth Circuit was in effect, and by express statement, a ruling that the police Justice was immune without regard to the allegations against him or what the proof might show.

II.

Did petitioners consent to the arrest?

Consent to an illegal arrest is absurd on its face. An arrest is an intentional act by police officers. It is no more a consensual act to be arrested than it is consensual to be electrocuted at a later time in the arrest process.

While it is certainly true that petitioners knew that they might be arrested no matter how peaceful they were, because of the way the police were acting in Jackson, the option was entirely that of the police. Petitioners had a right to be there in a peaceful manner. Being peaceful, they were nevertheless arrested. At this point, a brave man must face his responsibility. To have left this station after this clearly improper order of the police, when one is doing no wrong, would have been an act of cowardice. In every way, it would have continued to perpetuate the immoral practice of segregation. If people walk away at this, the immoral practice goes on. But knowing that the police will probably act improperly does not make the refusal to move an act of consent. One may consent to a variety of acts, such as batteries, but that was not the case here. Knowledge that they would be arrested should they refuse the illegal order of the police is hardly the consent that vitiates the wrong of the police, knowingly acting in response to the police stanchion, "White only, by order of the police."

The "plan and purpose" defense suggested by the Fifth Circuit could not come into play until petitioners were arrested and the arrests are found to have been illegal. Consequently, most of what respondents say on that issue is beside the point. If the arrests were illegal, and if, as is conceded, the ministers did nothing to initiate the arrests other than to enter the terminal as an integrated group, then surely those who made the illegal arrest should not be free from liability because the persons arrested knew that they might be or even probably would be arrested. No less is this true even though they thought that an arrest might hasten the end of evil by exposing it. The arrests were just as illegal whether the ministers deplored their arrests as symptomatic of sham justice in support of segregation or thought their arrests would be a useful witness which would focus attention on sham justice in support of segregation.

III.

Respondents improperly interpret the claim of petitioners as being based solely on the later declaration of unconstitutionality in *Thomas* v. *Mississippi*.

Respondents and the Court below (R. 448-449) misinterpret the claim of petitioners. We rely only in part on the fact that in *Thomas* v. *Mississippi,* 380 U. S. 564 (1965), this Court reversed the convictions of the freedom riders, without oral argument, on the theory that the statute of Mississippi, as interpreted by their Courts, was unconstitutional. But we urge that equally significant, and ignored by the Court below, is the fact that at the trial *de novo* of Father Jones, the case was dismissed by Judge Moore at the end of the prosecution's case. In other words, there was no evidence which showed a violation of law, and therefore no basis for the arrests.

In this sense, the case before us now is different from *Thomas* v. *Mississippi, supra.* In *Thomas* the convictions by Judge Spencer were upheld by Judge Moore in the trial *de novo* as well as in the higher appeals in Mississippi. But not so in the case before us. There was no evidence for the arrest in the first place in our case. We do not rely solely as the Court below thought, then, on the statute being declared later unconstitutional. We urge that these defendants individually and in concert arrested and convicted petitioners and thus knowingly deprived them of equal rights guaranteed by the United States Constitution and particularly section 1983.

The evidence in this case, together with what we were allowed to show, upholds our contention that they were right to be there in a peaceful manner. Being peaceful, they were nevertheless arrested. At this point, a brave man must face his responsibility. To have left this station after this clearly improper order of the police, when one is doing no wrong, would have been an act of cowardice. In every way, it would have continued to perpetuate the immoral practice of segregation. If people walk away at this, the immoral practice goes on. But knowing that the police will probably act improperly does not make the refusal to move an act of consent. One may consent to a variety of acts, such as batteries, but that was not the case here. Knowledge that they would be arrested should they refuse the illegal order of the police is hardly the consent that vitiates the wrong of the police, knowingly acting in response to the police stanchion, "White only, by order of the police."

The "plan and purpose" defense suggested by the Fifth Circuit could not come into play until petitioners were arrested and the arrests are found to have been illegal. Consequently, most of what respondents say on that issue is beside the point. If the arrests were illegal, and if, as is conceded, the ministers did nothing to initiate the arrests other than to enter the terminal as an integrated group, then surely those who made the illegal arrest should not be free from liability because the persons arrested knew that they might be or even probably would be arrested. No less is this true even though they thought that an arrest might hasten the end of evil by exposing it. The arrests were just as illegal whether the ministers deplored their arrests as symptomatic of sham justice in support of segregation or thought their arrests would be a useful witness which would focus attention on sham justice in support of segregation.

III.

Respondents improperly interpret the claim of petitioners as being based solely on the later declaration of unconstitutionality in *Thomas* v. *Mississippi.*

Respondents and the Court below (R. 448-449) misinterpret the claim of petitioners. We rely only in part on the fact that in *Thomas* v. *Mississippi,* 380 U. S. 564 (1965), this Court reversed the convictions of the freedom riders, without oral argument, on the theory that the statute of Mississippi, as interpreted by their Courts, was unconstitutional. But we urge that equally significant, and ignored by the Court below, is the fact that at the trial *de novo* of Father Jones, the case was dismissed by Judge Moore at the end of the prosecution's case. In other words, there was no evidence which showed a violation of law, and therefore no basis for the arrests.

In this sense, the case before us now is different from *Thomas* v. *Mississippi, supra.* In *Thomas* the convictions by Judge Spencer were upheld by Judge Moore in the trial *de novo* as well as in the higher appeals in Mississippi. But not so in the case before us. There was no evidence for the arrest in the first place in our case. We do not rely solely as the Court below thought, then, on the statute being declared later unconstitutional. We urge that these defendants individually and in concert arrested and convicted petitioners and thus knowingly deprived them of equal rights guaranteed by the United States Constitution and particularly section 1983.

The evidence in this case, together with what we were allowed to show, upholds our contention that they were arrested solely for the purpose of protecting segregation in Mississippi. In front of the door to the bus station was the sign "White Only by Order of the Police". In other words, if Negro and white clergymen entered together they were in violation of the police order. This explains the action of the police immediately after the clergymen entered the station. This accounts for the arrest. Nothing in the conduct of the clergymen can account for it. Furthermore, this Court's decision in *Thomas* v. *Mississippi,* 380 U. S. 524 (1965), reversing at the time it granted certiorari, holds that peaceful persons, who have done nothing to incite others to violence, contrast *Feiner* v. *New York,* 340 U. S. 315 (1951), cannot be arrested because others indicate that they so dislike them that they might act violently against them. That was the issue in *Abernathy* v. *Alabama,* 380 U. S. 447 (1965), one of the two cases cited by this Court in *Thomas* (see *Abernathy* v. *Alabama,* 155 So. 2d (Ala. Ct. Appeals 1962)).* The purported basis for the arrests, therefore, has been held insufficient by this Court. When that is the case, the state official is liable for his actions even though, as with the "Judges of Elections" involved in *Nixon* v. *Herndon,* 273 U. S. 536, 539 (1927), the action was taken on the basis of a state statute, even if, as in *Smith* v. *Allwright,* 321 U. S. 649 (1944), the state statute had earlier been upheld by this Court.

---

* Similarly in *Cox* v. *Louisiana,* 379 U. S. 536 (1965), this Court held not only that the Louisiana statute—this statute *in haec verba*—was unconstitutionally vague, but also that the state could not arrest and punish unpopular but non-violent persons merely because "violence was about to erupt" from others.

IV.

Probable cause for the arrests herein has improperly been admitted as a defense to plaintiffs' causes of action.

As *Prosser On Torts* points out, Section 12 (3rd edition), much confusion exists as to the difference between false arrest and malicious prosecution. Malicious prosecution derives from the common law action founded in case. It is an action directed not against the police officer carrying out the mandate of a Court to arrest a particular person, but against the person making the charge to the police. Probable cause is available to such a person when sued for damages.

But to the officer making an arrest without a warrant of a court, for an act allegedly committed in his presence, no defense of probable cause is available in a suit for damages. This is an action for false arrest and stems from the Common Law action of trespass.

The confusion discussed by Prosser is illustrated both by the Court below (R. 452) and our worthy opponents in their brief at page 23.

Our opponents cite, as they acknowledge, malicious prosecution cases to prove the availability of probable cause as a defense. But this is precisely the difference between false arrest (trespass) and malicious prosecution (case). The cases they cite are not false arrest actions, and so are irrelevant.

Before this Court is an action for false arrest. While the Mississippi Courts illustrate the general confusion as to these causes of action, analysis shows that the Mississippi cases where probable cause was allowed as a defense, the complaint alleged a malicious prosecution whatever the term actually used. Nothing in *Forsythe* v. *Ivey* is to the contrary (cited by our opponents on pages 21-2 of their brief). In that case nowhere does the Court state that probable cause is available as a defense in an action for false arrest.

Probable cause is not applicable to arrests made, as in the case at bar, where the action is against arresting officers and where the arrested persons committed no wrongful acts (as found by the trial *de novo*). Nor, at least under section 1983, is it a defense to arrests purportedly justified by a statute which is in fact unconstitutional.

The Court of Appeals (R. 452), conceived of Petitioner's action as being based solely upon a statute later declared unconstitutional (see *Thomas* v. *Mississippi, supra*). But, of course, this has never been so, thus the citation of *Golden* v. *Thompson,* 194 Miss. 241, 11 So. 2d 206 in their opinion is also quite irrelevant to the question of arrests made without evidence, since it does not discuss probable cause as a defense in a case of this kind.

V.

Respondents' factual statements.

1. Page 7: Petitioners had not at any time "congregated there standing in a group so as to block the stairs." Only subsequently to their being halted and then arrested did they stop inside the station. And accordingly any crowd that collected, if there was such, resulted from the police stopping and arresting them, and not from anything they had done.

2. Page 7: The reciting of the Lord's Prayer did not take place until after they were arrested, and thus could not be the cause of any crowd collecting before they were arrested.

3. Page 7: Respondents in effect concede at the outset everything they deny thereafter for they agree that police officers Griffith and Nichols prevented the ministers from entering the restaurant. It was afterwards, when the ministers had been brought back into the waiting room, that those officers arrested the ministers without seeking in any way to calm or restrain the "mumbling" onlookers.

VI.

CONCLUSION

For these reasons, as well as those set forth in our main brief, we request that the relief be granted as set forth in our main brief.

Respectfully submitted,

CARL RACHLIN, Esq.
150 Nassau Street
New York, New York 10038

MELVIN WULF, Esq.
156 Fifth Avenue
New York, New York
Attorneys for Petitioner

STEPHEN M. NAGLER, Esq.
Of Counsel

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. ____________

ROBERT L. PIERSON, et al.,

Petitioners,

v.

J. L. RAY, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

Opinion Below

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 352 F.2d 213.

The District Court for the Southern District of Mississippi, Jackson Division, wrote no opinion. Its judgment and order is at R.

JURISDICTION

The judgment of the Fifth Circuit of Appeals was entered on October 25, 1965. On January 21, 1966, by Order of Mr. Justice Black, the time within which to file a petition was extended to and including February 27, 1966 (CORE: Second Extention?). The petition was filed on   , 1966 and was granted on May 16, 1966,---U.S.---.* The jurisdiction of this Court rests on 28 U.S.C. §. 1254 (1).

[illegible]

STATUTE INVOLVED

The statute involved is Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983.

As printed in Title 42, the Section reads:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, rprivileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

QUESTIONS PRESENTED

1. Whether proof that a group of ministers chose to exercise their constitutional right to travel as a racially integrated group despite their knowledge that doing so might subject them to illegal arrest renders policemen

---

*Respondents opposed the granting of certiorari but stated that if petitioners petition was grante d this court should also review a question raised by respondents as to the meaning of the opinion of the Fifth Circuit. The Court granted both petitions and consolidated the cases.

who arrested them free fromliability in damages under 42 U.S.C. § 1983 where it is shown that:

(a) the arrest was in fact made to enforce the segregation laws, customs or usages of the state of Mississippi whereby the entrance to the bus terminal waiting room in which the ministers were arrested was marked "white waiting room only--by Order of the Police Department" and had never been entered by a Negro without his being arrested;

(b) the persons arrested were completely orderly;

(c) the statute that purportedly was used to justify the arrests made guilty of "disorderly conduct: persons who congregate with others in a public place "with intent to promote a breach of the peace or under circumstances such that a breach of the peace ~~xx~~ might be occasioned thereby" and who refuse to move on upon request of a law enforcement officer:

(d) it was subseqently held at a time de novo of the ministers that there was no evidence under that statute against them;

(e) that statute was subsequently in another case held unconstitutional on its face by this Court.

2. Whether a municipal police justice (a) alleged to have conspired with police officers to have white and Negro ministers arrested, convicted and sentenced to jail for the sole purpose of enforcing the segregation laws, customs, or usages of the State of Mississippi, and (b) whose conviction of the ministers for congregating in an orderly fashion but under such circumstances that other persons might cause a breach of the peace was

subsequently reversed at a trial *de novo* at the close of the prosecution's case on the ground that there was no evidence against the ministers, is immune from a suit for damages under 42 U.S.C. § 1983, which (1) applies, without exception, makes liable in damages "every" person who deprives another person of his constitutional or other federal rights under color of state law, etc. and (2) was intended by the Congress that enacted it to apply to such conduct by such judges.

3. Whether, assuming that under Mississippi law, applicable in the diversity cause of action, the police officers are not liable in damages for false arrest on the ground that they made an arrest under a "disorderly conduct" statute was subsequently declared unconstitutional, the police officers would not nevertheless be liable if the arrest was in fact made to enforce the segregation laws, customs and usages of Mississippi or there was no probable cause to believe the "disorderly conduct" statute had been violated and whether therefore a jury issue xxxx remain as to the reasons for and circumstances of the arrest.

PROCEEDINGS BELOW

Petitioners brought suit in the United States District Court for the Southern District of Mississippi, Jackson Division, against three policemen and one police justice of Jackson, Mississippi.* The suit was for damages under (a) 28 U.S.C. 1343 alleging a cause of action under 42 U.S.C. § 1983 and (b) 28 U.S.C. § 1332 alleging diversity of citizenship and a cause of action for false arrest and imprisonment under Mississippi law. Judgments in favor of defendants-respondents were entered upon a jury verdict.

---

*In addition to the person names in the caption, there are the following additional petitioners and respondents: Petitioners: James P. Breeden, James G. Jones, Jr. and John B. Morris; Respondents: Joseph D. Griffith and David A. Nichols (both along with J.L. members of the Police Department of the City of Jackson, Mississippi) and James L. Spencer, of Jackson.

Upon appeal, the Fifth Circuit (1) reversed the judgment as to the policement with respect to the federal cause of action under 42 U.S.C. § 1983 but remanded with instructions that plaintiffs should not be permitted to recover if they knowingly planned to go a place where travelling as an integrated group would subject them to illegal arrest, (2) directed that the state law cause action against the policement should be dismissed and (3) held that the police justice was immune from suit under both causes of action and directed that the complaint against him should be dismissed.

STATEMENT

A. Petitioners' Arrest and Confinement.

Petitioners are three white and one Negro Episcopal clergymen.* As members of a "Prayer Pilgrimage" they sought, in September 1961, to visit church institutions in both the South and the North, from New Orleans to Detroit where their church convention was to be held in order to deliver and dramatize their "message to the Church that the Church must become, in every phase of its life, that which by the grace of God it is--one Holy Fellowship where racial barriers have been done away" (Defendants' Exhibit No. 1, R. 132).

On September 13th the clergyment arrived in Jackson, Mississippi, planning to take a Continental Trailways bus scheduled to leave for Chattanooga, Tennessee, shortly after noon. At approximately 11:30 a.m., petitioners and eleven other gmxkx Episcopal clergyment (nine white , two Negro) all dressed in clerical garb, arrived at the Jackson Trailways Bus Terminal in three taxis from Tougaloo College where they had spent the previous night. (R. 88-90, 180--181, 375-376, 463-464.)

---

*Pierson, Jones and Morris are white. Breeden is a Negro.

The entrance to the Terminal waiting room was marked "White Waiting Room Only--By Order of the Police Deparment" (R.488-489, 270-277, 519-520). But the integrated group nevertheless entered the waiting room and upon entering turned left to go into a restaurant. However, before more than four or five had passed through the restaurant doors, defendents Griffith and Nichols, Jackson police officers who had been waiting for the group to arrive,* ordered ikmx the group to "hold it" or "come out." (R. 90--93, 182-185, 376-378, 464-465, 545-546.)

The ministers then gathered in the waiting room, outside the restaurant, and were told by the police officers to "move along." The ministers replied that they only wanted to eat and asked why they could not do so. The police did not reply except to say again move on. When the ministers did not do so, they were arrested. (R. 95-96, 186-187, 379,-465.)

Defendant Ray, a superior police officer, arrived a few minutes later. He walked directly to the ministers, ordered them to move along and when they again did not do so but explained that they were hungry and wished to eat before their bus departed, he also place them under arrest, put them in a paddy wagon and sent them to jail. (R. 99-100, 189-191, 370-382, 467-469.)

---

*Petitioner Jones testified that as the ministers passed the two police officers standing in the waiting room doorway, he heard one of them say "shall we get them now or later" (R.91).

The court below stated that the "prayer pilgrims were completely orderly." (352 F. 2d at 216; R.) The arresting officers conceded that the ministers were orderly and quiet (R. 506, 583, 598). Petitioners testified that (1) no one followed them into the station, (2) the waiting room was quiet and (3) no one in it threatened them by word or gesture (R. 92-98, 181, 186--192, 376, 378-380, 463, 466-469). That testimony was confirmed by Father Layton P. Zimmer, a fellow Episcopal priest who was in the station in nonclerical garb and who observed petitioners' arrest (R. 546-550).

The policement claimed, however, that there was a "crowd" in the station in an "ugly" mood and that consequently they feared that the ministers might be attacked (R. 494-496, 575-578, 592-593, 603-612).* But when pressed about the crowd and its ugly mood, Officer Griffith conceded that "I just noticed maybe two or three of them mumbling, kind of saw them jabbering a little to each other ...off at a distance, something like that" (R. 496; 612).** Furthermore there was no evidence whatsoever that any hostile persons were in the restaurant, which the police prevented the ministers from entering.

The police conceded that they made no effort whatsoever to arrest the persons whom they claimed were in an ugly mood (or mumbling at a distance).***

---

*The police testimony was not supported by any independent witnesses and employees of the bus terminal.

**Similarly, Officer Nichols admitted that he did not mention an ugly mood when he telephoned the police station to obtain defendant Ray (R.490).

***The police never testified how many such persons there were. The only police testimony on the number of persons in the station was that 12 to 15 had been there prior to the arrival of the ministers and 20 to 25 followed the ministers in.

Nor did they ask such pers ons to leave, or even say a word to them or caution
or calm them in any way. (R.495, 584-585, 611-612). Far from contending that
it would have been difficult to control those who were in a ugly mood (or
mumbling), the police said that they didn't even ask any such persons to leave
because the ministers by their presence "was the cause of the violence if any
might occur." (R.502). That the real ximm aim of the police was to enforce
segregation customs and laws is also suggested by the police testimony (1) that
it was wrong for whites and Negroes to be together in bus stations or anywhere
(R. 485, 502); (2) that a Negro had never gone into that part of the station
and not been arrested (R. 500) and (3) that "if /the ministers/ did it again
today" they would again arrest them (without any reference to a supposed ugly
crowd) (R.491).

B. Petitioners' Conviction by Police Justice Spencer.

Two days after their arrest, petitioners were tried by defendant Spencer,
a police justice serving at the pleasure of the Mayor of Jackson (R.272). Pe-
titioners were tried upon a "General Affidavit" of defendant Ray which said that peti-
tioners:

> "...with intent to provoke a breach of the peace, did then and there willfully and unlawfully congregate with others in or around...a place of business engaged in selling or serving members of the public, and did then and there fail or refuse to disbursed and move on as then ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi." (R. 110-111; 238-239; 390).

Seven months after petitioners' convictions, the prosecution sought and
obtained leave to amend the affidavit in respect of the three white petitioners
(Pierson, Morris and Jones). The changes of substance were (1) striking the

words "with intent to provoke a breach of the peace, did then and there willfully and unlawfully" and substituting "under such circumstances that a breach of the peace might be occasioned thereby, did then and there" and (2) adding the words "willfully and unlawfully" prior to the words "fail or refuse." (R. 117-119, 238-239, 390.)*

The affidavit in its original and its amended form was written in terms of Section 2087.5 of the Mississippi Code, which had been enacted in 1960. Section 2087.5 subsequently was declared unconstitutional by this Court (at the same time as it granted the petition for certiorari) in a case similar to petitioners' which also arose from Police Justice Spencer's court. *Thomas* v. *Mississippi*, 380 U.S. 524 (1965). Cf. *Brown* v. *Louisiana*, --U.S.---, ---(1966); *Cox* v. *Louisiana*, 379 U.S. 536, 547, 551 (1965); *Edwards* v. *South Carolina*, 372 U.S. 229 (1963).

Defendant Spencer convicted petitioners of violating that statute and gave them the maximum sentence--four months in jail and a $200 fine.

Defendant Spencer admitted there had been no evidence that petitioners were disorderly in any way (R. 511-512). He also admitted (in a portion of his deposition that the trial court excluded from evidence)that he assumed that a person was never entitled to decline to obey an order of a police officer, no matter how improper, and that he had never researched the law on the subject (R.516). Instead, at petitioners' trial, he read to them an article of religion from the Episcopal book of Common Prayer dealing with the duty of priests to *obey civil authorities* and gave his opinion that petitioners were "guilty" of

*In addition "disperse" was substituted for "disburse".

violating that article (R.532-539).

The complaint alleged a conspiracy between the policemen and Judge Spencer to have the ministers arrested and convicted for violating the segregation laws, customs, ruling and usages of the State of Mississippi (R.7). The trial court refused to permit questioning of Judge Spencer designed to establish his role in the alleged conspiracy (R. 510-539).

Police Justice Spencer had tried all the cases (some 50 trials and 300 defendants) which had previously arisen out of the efforts of integrated groups to use the Jackson bus terminal (R.517-518).

C. The Subsequent Decision at a Trial De Novo That There Had Been No Evidence Against Petitioners.

Petitioners' convictions were vacated after trials *de novo* in the County Courts of Hinds County. Petitioner Jones was the first to be retried. After the City offered its evidence, Jones moved for a directed verdict of not guility; the County Judge granted the motion and adjudged him not guility (R.481-482). Thereafter, as previously mentioned, the prosecution amended Chief Ray's affidavit against the other petitioners so as to substitute for the contention that the ministers intended to provoke a breach of the peace the contention that the ministers gathered together under such circumstances that a breach of the peace "might be occasioned thereby." Pursuant to that allegation, Jones was retried in the County Court. But The County Court again granted a directed verdict at the close of the City's case. (R.119-120). The County Court then granted the prosecutor's motion to nol. pross. the cases against Morris and Pierson on the grounds that the vidence against them was the same as the evidence against Jones (R.234-235, 245, 396).

D. The Trial and Appeal of This Action.

The jury found for respondents after the trial court had permitted petitioners to be examined about the following matters:

1. Whether they agreed with the Communist Party's race relations program as set forth in the Daily Worker of May 26, 1928 (R. 158-165);
2. Whether they believed in the abolition of all laws prohibiting intermarriage of persons of the Caucasian and the Negro races (R.415-417, 160);
3. Whether they supported the "Freedom Ride Invasion" of Jackson (R.214-219) and whether they supported the purposes and activities of those groups that call themselves Freedom Riders (R. 142-149, 225-253, 260-261, 268, 357, 405, 407, 409, 412);
4. Whether their attorneys in Police Justice Spencer's court had previously represented many Freedom Riders (R. 416);
5. Whether their trial counsel was the general counsel of the Congress of Racial Equality (CORE) (R. 419, 223-230, 317); and
6. Whether petitioner Pierson had suggested any corrections in a magazine article that had referred to a New York newspaper headline stating "Arrest Son-in-Law of Governor Rockefeller as "Freedom Rider'''(R. 425-426).

In addition, the trial court permitted nine letters written by petitioner Morris to prospective and actual members of the Prayer Pilgrimage to be introduced and extensively used in cross-examination concerning the beliefs of Father Morris and the aims of the Prayer Pilgrimage (R.249-270, 272-362).

On the basis of the letters, the defense contended (1) that the ministers knew that travelling as an integrated group might subject them to arrest and jailing and (2) that the ministers prepared for the possibility that some of their members would be arrested and jailed.

On appeal, the Fifth Circuit Court of Appeals held the following:

A. Policemen Defendants:

1. The judgment in their favor in the civil rights cause of action, 42 U.S.C. § 1943, should be reversed because the trial court permitted questions dealing with petitioners' views on race as compared with the Daily Worker of May 26, 1928 and (2) the Freedom Rid Riders, with whom said the court, no connections was shown.
2. Petitioners would normally be entitled to a directed verdict on the issue of liability in the civil rights cause of action because the arrests were improper but the case should be remanded for a hearing on the merits because recovery would be precluded if it were shown that petitioners planned to go to places where their orderly travelling as an integrated group might subject them to arrest.
3. Without regard to the reasons for which they made the arrests or the circumstances existing at the time of the arrests, the policemen were immune from liability under the diversity cause ~~purposes~~ of action for false arrest because the statute under which they purported to arrest petitioners had not yet been held unconstitutional.

B. Police Justice Spencer was immune from liability under both causes of action on the ground that he was a judicial officer and the complaint against him should therefore be dismissed.

SUMMARY OF ARGUMENT

A. In their cross-petition respondents did not contend that the Fifth Circuit erred in reversing the decision of the district court on the ground that improper questions (e.g., whether petitioners agreed with the views on race relations of a May 1928 issue of the *Daily Worker*) had been asked. The dispute between the parties relates to the terms of the Fifth Circuit's remand.

B. It was error to hold that Police Justice Spencer was immune from suit under 42 U.S.C. § 1983, despite the allegations and the proof (limited as it was by the trial court's exclusionary rulings) that he knowingly and intentionally acted individually and in concert with the police to punish petitioners for exercising their constitutional rights, and to enforce the segregation laws, and usages of Mississippi.

The statute provides for no immunities. Rather it applies to "every" person who acts under color of state law to deprive other persons of their constitutional rights. Members of Congress who opposed the statute did so specifically on the ground that it would subject judges to liability. Members of Congress who sponsored and supported the statute did so and said they did so in part because they were shocked at the defiance of law by racist judges. It is clear from the legislative history that Congress intended that a state judge, just as any other person, who knowingly and maliciously used his office to deprive persons of their civil rights, should be liable.

The only court to consider that legislative history so held. *Picking* v. Pa.R.Co., 151 F. 2d 240 (3rd Cir. 1945).

This Court's decision in Tenney v. Brandhove, 341 U.S. 367 (1951), holding that state legislators are immune from suit under the predecessor of section 1983, even if it be regarded as correct, does not control the application of the statute to judges.

On its face, the statute applies tothose who act under color of law, not those who enact laws. Congress was aware of the distinction (so were the framers of the United States Constitution, which provides for a legislative but not a judicial immunity.)

IV.

ALTHOUGH THE QUESTION NEED NOT BE DECIDED IN VIEW OF THE EVIDENCE THAT THE POLICEMAN USED THE "DISORDERLY CONDUCT" STATUTE AS A SHAM BASIS FOR ARREST, THE FACT THAT THE STATUTE WAS SUBSEQUENTLY HELD UNCONSTITUTIONAL (AT LEAST WHEN COUPLED WITH THE FACT THAT IN THE TRIAL *DE NOVO* THERE WAS HELD TO BE *NO* EVIDENCE AGAINST THE MINISTERS UNDER THAT STATUTE) SHOULD GIVE RISE TO A DIRECTED VERDICT AGAINST THE POLICEMAN UNDER 42 U.S.C. § 1983.

A. Leaving aside the strong evidence of police bad faith that is present here, the question raised by respondents' cross-petition is whether Congress in 1871 intended to hold liable police officials who arrested persons under statutes subsequently held unconstitutional under the Federal Constitution.

Under the common law, police officers traditionally were liable for making warrantless arrests under a statute that was subsequently held invalid. See Field, "*The Effect of an Unconstitutional Statute in the Law of Public Officers: Liability of Officers for Action or Nonaction*," 77 *U. Pa. L. Rev.* 155, 177 (1928). There is no reason to suppose that the 1871 Congress intended to change that rule. The language of section 1983 is directly applicable.

B. In interpreting the predecessor of section 1983, this Court in *Lane* v. *Wilson*, 307 U.S. 268 (1939), held that a person deprived of the right to vote under a state statute subsequently held unconstitutional could sue the official who relied upon the statute for damages.* See also *Smith* v. *Allwright*,

---

*The Court's opinion focused upon the issue of whether the statute was constitutional and once it had concluded that it was the Court did not even question the right of the aggrieved voter to sue for damages under section 1983.

C. It was also error to hold that, if defendantd did illegally deprive the ministers of their rights under color of state law, defendants would nevertheless be free from liability under 42 U.S.C. § 1983 if they could prove that the ministers went to Jackson with a "plan and purpose of being arrested and jailed." 352 F 2d at 220.

The ministers did nothing to initiate their arrest and ~~x~~ jailing other then to enter the white waiting room as ~~anxxx~~ an integrated group. Their orderly conduct has not been disputed. All that there could possibly be by way of "plan and purpose" is foreknowledge that traveling as an integrated group might subject them to arrest, coupled with a decision to nevertheless exercise their constitutional rights to so travel. If, thereafter, they are in fact arrested, illegally, and suffer harm thereby does the policeman who arrested them escape liability because he was sufficiently contemptuous of the Constitution to make known in advance his intention to act illegally by placing a sign would the angry Congress that enacted the Civil Rights Act of 1871 have intended to free the open and notorious law breaker from liability? That is just what it was dealing with, open official defiance of Federal law, known official lawlessness directed against loyal whites and all blacks. And it ~~xxxx~~ created a damage remedy.

D. Therefore, it was error to hold that the diversity cause of action against the policemen should be dismissed.

Even assuming that the court below was correct in holding that it is the law in Mississippi (contrary to most jurisdictions) that a policeman is free from liability for false arrest for making an arrest remains a jury issue as to whether the police acted in good faith in reliance on the statute. Here, the jury finding does not, of course, resolve that question since that finding was tainted by the improperly admitted evidence that necessitates reversal.

The police testimony indicated that their real aim was to preserve the ~~segm~~ segregated waiting room, in which any Negro who entered was arrested. The ministers'

~~km~~

testimony was that there were no threats from others in the waiting room. The police testimony to the contrary was weak and conflicting, reduced under pressure to statements that a few unspecified persons weremumbling. In any event, the police admitted that they made no effort whatsoever to calm or restrain such persons. Indeed, it was the police who kept the ministers from being separated from whatever few mumblers or glarers there were. The police stopped the ministers from entering a restaurant though they could have excluded thos who were supposedly hostile to the ministers. There was no evidence that any threat to the peace would have arisen in the restaurant.

The evidence that the police used the"disorderly conduct" statute as a sham basis for the arrests, that their real aim was to preseve segregation, that they did not act in good faith, is strong. It was held on the Criminal trial de novo, after all, that there was no evidence under the "disorderly conduct" statute under which the arrests were purportedly made. At the least there is a question for the jury.

E. While the question need not be resolved in the light of proof that there was, in fact, no disorderly conduct referred to above. That was the traditional rule. This is what the language of 42 U.S.C. §1983 says Cf. Smith v. Allwright, 321 U.S. 649 (1944). As this court, in interpreting that Act has said, "it is immaterial whether(the state officials) conduct is legal or illegal as a matter of state law." McNeese v. Board of Educ., 373 U.S. 668, 674 (1963). In Lane v. Wilson, 307 U.S. 268 (1939) this court held that a person deprived of the right to vote by an official acting under a state statute that this Court subsequently ruled was unconstitutional had a right to sue that official for damages under Section 1.*

* Once it had concluded that the statute was unconstitutional this Court did not even discuss whether the fact that the official had acted pursuant to a statute was a defense.

ARGUMENT

1.

A POLICE JUSTICE, WHO KNOWINGLY AND INTENTIONALLY ACTS INDIVIDUALLY AND IN CONCERT WITH THE POLICE TO PUNISH PERSONS FOR EXERCISING THEIR CONSTITUTIONAL RIGHTS, TO ENFORCE SEGREGATION LAWS, CUSTOMS AND USAGES, AND TO CONVICT PERSONS UNDER A STATUTE OF WHOSE VIOLATION THERE WAS NO EVIDENCE, IS NOT IMMUNE FROM LIABILITY IN DAMAGES UNDER 42 U.S.C. Se 1983, WHICH APPLIES, WITHOUT EXCEPTION, TO, 'EVERY PERSON", THAT WAS SAID BY THE CONGRESS THAT ENACTED IT TO APPLY TO SUCH CONDUCT BY SUCH JUDGES, AND THAT WAS INTENDED TO CREATE A REMEDY FOR SHAM JUSTICE IN THE COURTS.

A. It is important to note at the outset that ~~might~~ ~~a~~ neither the ~~a~~ complaint nor this argument contends that Police Justice Spencer could be held liable merely because the~~x~~ statute under which he convicted petitioners was subsequently held unconstitutional.

The questions, rather, is whether he should be immune from liability if any or all of the following facts can be shown: (a) he convicted petitioners in order to enforce Mississippi's segregation laws, customs, and usages, (b) he convicted petitioners of congreating with the intent of provoking a breach of the peace or under such circumstances that a breach of the peace might be occasioned thereby although there was no such evidence and without regard to whether or not there was such evidence, (c) he conspired with the police to punish persons who challenged Mississippi's segregation laws, customs and usages. The question, in other words, is whether a police justice should be immune if he acts maliciously, knowingly ~~as~~ and willfully to deprive persons of their constitutional rights.

B. The statute, Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, provides for no exceptions, no immunities. It applied to "any" person who under color of state law, etc., deprives "any" person of his federal constitutional or statutory rights.*

---

* As algored by the revisor who prepared the Revised Statutes of 1878, the statute refers to "every" person who deprives "any" person of his rights and as printed in 42 U.S.C., the statute refers to "every" person who deprives "any" person of his rights. "Every" is just as inclusive as "any", byt the original parallelism of "any" in describing culprit and victim makes it even clearer that Congress did not indend sub silentio to grant immunity to judges who administer sham justice.

The revisor removed other language that textually made it even clearer that no such immunity was intended. As enacted, the section stated that any person shall be liable for depriving persons of their constitutional rights, etc., under color of state law, custom, etc. "any such law, statute, ordinance, regulation, custom or usage to the contrary notwithstanding." (Emphasis supplied to the words that were ~~so~~ removed.)

The revisor lacked authority to alter law substantively. See Revised Statutes of the United States, 1878, Preface, p. 4; Appendix, pp. 1092-1093; 19 Stat. 268, ch 82 § 4, as amended by 20 Stat. 27, ch. 26. Title 42 has not been enacted into positive law.

c. The legislative history of Section 1 of the Civil Rights Act of 1871 makes it clear that Congress intended to render liable state judges who under color of state law, etc., maliciously, knowingly and willfully deprived persons of thier constitutional rights.

The Congress was concerned not with protecing good judges or other public servants against having to face charges of wrongdoing but rather with defiance of law by mobs and by officials, including judges. Congress was concerned that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective rederess."* It was shocked at the record of many judges.**

---

*Congressional Globe, 42 Cong., 1st Sess. (Congressman Love of 3/31/71, p. 374, col. 3).

**See for example: Senator Sherman of Ohio (summing up conference report) "Spreading terror and violence . . . now exist unchecked by punishment, independent of law, uncontrolled by magistrates." Id. 4/19/71, p. 820, col. 2.

Congressman Rainey of : "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity." Id., 4/1/71,

Congressman Bentley of : The remedy is needed because of "prejudiced juries and bribed judges". 4/3/71, p.

Senator Osborn of Florida: "These [illegible] with hands stained with blood, hostile to every man who stood by his country during the war, determined by fair means or foul, that loyal man shall not remain in power, ought not to sit upon juries and administer the laws enacted to ~~up~~ punish their own crimes." 4/13/71, p. 654, col. 2.

Congressman Porter of Virginia: The outrages committed upon loyal man there are under
forms of law" _Id._ p. 277, col.

Congressman Burchard of Illinois: ".........if.......in its judicial tribunals one
class is unable to secure that enforcement of their rights and punishment for their
information........the State has not afforded to all its citizens the q equal
protection of the laws." p. 315

Senator Pratt of Indiana: "(The laws) only fail in effeciency when a man of known
Union sentiments, white or black, invokes their aid. Then Justice closes the door
of her temples." p. 505.

Senator of : "The courts of the ....State fail
and refuse to do their duty in the punishment of offenders against the law."
p. 179 App.

22

It was, indeedn, the breakdown of justice that gave rise to the
need for legislation. See generally Monroe v. Pape, 365 U.S. 167,
174-183, 235-236 (1961).

If it be said that it is harsh or unwise to subject the state
judiciary to suits alleging that they knowingly and maliciously acted
to deprive a man of his civil rigths, the simple answer is that Congress
in 1871 intended harsh remedies to check bloody terror, stubborn defiance,
abuse of legal process and sham justice. A bloody civil war had been
fought. Congress had ousted state governments altogether and put in
military governments. And then after terror against and injustice to
the newly freed Blackman and the loyalists pread, Congress enacted Civil
Rights Act of 1871. Other sections of that Act were potentially far
harsher than applying Section 1 to judges. See, e.g., Sections 3, 4, and 6.

All the members of Congress who spoke on the problem, explicitly stated that
the section applied to judges. None disagreed. See Congressional Globe,
42d Congr., 1st Sess., 1871: Congressman Arthur, 3/31/71, p. 365, col. 3--p. 366,
col. 1; Congressman and Sheldon, 3/31/71, p. 368, Col. 1; Congressman Lowe,
3/31/71, p. 376, col, 1; Congressman Lewis 4/1/71, 4/1/71, p. 385, col. 1
Cf. Senator Thurman 4/13/71, p. 217, col. 1 (Appendix). And see Monroe
v. Pape, supra, 365 U.S. at 233, n. 49.

The legislative history of Section 2 of the Civil Rights Act of 1866,
14 Stat. 27, also supports the conclusion that the 1871 Congress did not
intend silently to exempt state judges who knowingly and maliciously
deprived persons of their constitutional rights. It does so because

(1) the similar terms of the earlier Act were specifically referred to as a guide to the 1871 Act by its principal sponsor, Congressman Shellabarger, when he introduced the 1871 Act, Cong. Globe, 42d Cong., 1st Sess. 1871 3/28/71, p. 319, col. 3, printed in Appendix, p. 68, col. 1 (see also *Monroe v. Pape, supra*, 365 U.S. at 171) and (2) the mood of the earlier Congress casts light upon that of the later Congres.. President Andrew Johnson vetoed the 1866 Act on the ground, among others, that it subjected state judges to criminal liability for depriving persons of their civil rights. *Cong. Globe,* 39th Cong., 1st Sess., 3/27/66, pp. 1679, 1780, col. 2. Congress re-enacted the Act over the President's veto and in so doing specifically stated that it was intended that judges who knowingly used their office to deprive persons of their civil rights should be punished.*

---

*See Senator Trumbull of , Chairman of the Committee on the Judiciary, who led the successful effort to overrule the veto, at *id.*, 4/4/66, pp. 1758-59, passim and in particular:

"But it is said that under this provision judges of the courts and ministerial officers who are engaged in the execution of any such statutes may be punished. . . I admit that a ministerial official or a judge, if he acts corruptly or viciously or under color of an illegal act may be and ought to be punished......"

"The assumption that State judges and other officials are not to be held responsible for violations of United States laws, when done under color of State statutes or customs, is akin to the maxim of the English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which the rebellion was hatched."

See also Senator Jouhnson of , id., 4/5/66 p. 1778, col. 1; Senator Cowan, 4/5/66, p. 1783.
Congressman Lawrence of , the only speaker on the subject in the House said:
......."It is better to invade the judicial power of the State than permit it to invade, strike down, and destroy civil rights of citizens....." id., 4/7/66, p. 1837, col. 1

The only case to examine of the above legislative history,
D. P
Picking v. Pa. R. Co. 151 F. 2d 240 (3rd Cir. 1945), held that a
state judge who knowingly violated a person's constitutional rights
was not immune. See "Liability of Public Officers To Suit Under
The Civil Rights Acts", 46 Colum. L. Rev. 614 (1946). See also
McShane V. Moldonan, 172 F. 2d 1016 (6th Cir. 1949); cf. Burt v. City
of New York, 156 F. 2d 791, 793 (2d Cir. 1946): Viles V. Symes, 129
F 2d 828 (10th Cir. 1942:; Blackman v. Stone, 101 F. 2d 500 (7th
Cir. 1942);Mitchell v. Greenough, 100 F. 2d 184 (9th Cir, 1938);
Green v. Elbert, 63 Fed. 308 (8th Cir. 1894) However, following this
Court's holding in Tenney V. Brandhove, 341 U.S. 367 (1951), that
state legislators are immune from suit under 42 U.S. C. § 1983, several
federalcourts haveheld that it follows from Tenney that state judges
are immune. None of those courts refer to the legislative history that
shows the contrary.

But Tenney , even if it is regarded as correct, is distinguishable.
Congress intended to cover judges even if it did not intend to cover
legislators. The statute on its face covers those who act under color of
law, not those who enact laws.* The principal problem in 1871 was not
legislation.

---

*See that distinction made explicit during the debate on the analogous
provisions of Section 2 of the Civil Rights Act of 1866. Cong Globe
39th Cong., 1st Sess., 4/5/66, p. 1758, col. 1 (Senator Trumbull of
). The United States Constitution itself mentions a legislative
immunity, but no judicial immunity. Article 1, Section 6.

* Quite apart from the legislative history that shows that Congress did
intend to cover state judges, one of the difficulties in carving out an

---

exemption for judges is the lack of basis to distinguish between judges and other officials it was sham justice.

E. Reasons have been put forward why it is good policy to exempt judges from suits based upon their official acts even though malice is allged. See, e.g. *Bradley* v/ *Fisher*, 13 Wall (80 U.S.) 375 (1871). The same reasons have been put forward to justify granting immunity to other public officials, *Gregoire* v. *Biddle*, 177 F. 2d 579, 581 (2d Cir. 1949), even those quite far removed from the pinnacles of responsibility. *Barr* V. *Mateo*, 360 U.S. 564 572-574 (1959).* But, apart from policy, it surely is not unconstitutional for Congress to say that state judges should have to meet charges that they misused their office to knowingly deprive persons of their constitutional rights. That is what the 1871 Congress intended. That Congress sought but to provide a remedy against not to protect good justices.

11

ALL THAT THERE WAS BY WAY OF "PLAN AND PURPOSE TO BE ARRESTED WAS FOREKNOWLEDGE THAT TRAVELING AS AN INTEGRATED GROUP MIGHT SUBJECT THE MINISTERS TO ARREST. STATE OFFICIALS WHO ACT UNDER COLOR OF STATE LAW TO DEPRIVE PERSONS OF THEIR CONSTITUTIONAL RIGHTS ARE NOT FREED FROM LIABILITY UNDER 42 U.S.C. § 1983 BY SHOWING THAT THOSE PERSONS KNOW THAT THEY MIGHT BE ARRESTED FOR TRAVELING AS AN INTEGRATED GROUP BUT NEVERTHELESS EXERCISED THEIR CONSTITUTIONAL RIGHT TO DO SO.

A. There is nothing in this case by way of "plan and purpose" other than foreknowledge that traveling as an integrated group might subject the members of the group to arrest. As submitted by the police and found by the court below the ministers did nothing to initiate arrest.

B. Under the decision of the court below the more openly and notoriously defiant and contemptuous of the Constitution, the less likely that a state official will be held liable in damages for violating the Constitution. Under~~xxxxxx~~ that theory, an official who goes on national television publicly to tear up the Constitution and announce that he will arrest and jail any Black man seen walkin with a white man ensures his freedom from damages for making such an arrest by the very publicity he gives to his illegal intent.*

Such a reward for defiance is repugnant. Surely it could not have been intended by a Congress whose very reasons for acting was that the Constitutions and the laws of the United States were being openly and notoriously defied with the aim of deterring Negroes and their white allies from exercising their human and civil rights.

C. The right that the ministers chose to exercise despite their knowledge that the police might arrest them was a constitutional right. ~~And~~

---

*Such a threat might in itself give rise to an action for damages under sections 1983 on behalf of those who could show that they were deterred from expressing their rights.

in determining whether a person is a volunteer and therefore is not injured pr jas assi,ed a rosk--both which are of course merely labels for the conclusions that under the circumstances damages ought not to be recovered--it is relevant to consider not only the offensiveness of the conduct of the defendant but also the social and personal importance of the action of the ~~pa~~ plaintiff.

Under the common law of assumption of the risk or consent, a ~~defendant~~ defendant who by his own wrong compels the plaintiff to choose between two evils, is not permitted to say that the plaintiff is barred from recovery because he made the choice. Valuable legal rights need not be surrendered because the defendant has threatened the plaintiff with harm if he exercises the right. See *restatement of Torts 2d*, § 496 E, Comment e, and 496 B, comments e j Prosser on Torts (3rd ed), pp. 465-466. Where amusement parks are involved, it is acceptable to say with Cardozo that "the timorous may stay at home" *Murphy V. Steeplechase Amusement Co.*, 250 N.Y. 479, 483; 166 N.E. 173,-- (1929) Not so where constitutional rights are involved.

D. The "plan and purpose" deferred proposal by the court below lists only after it has been found that the arrests were illegal. Congress in 1871 created a damage remedy to primarily to help those who dared to assert their constitutional rights in the face of illegal efforts to maintain white supremacy and primarily to hold those who openy defied the Constitution and laws in order to preserve white supremacy. In other words, this case

III.

THE EVIDENCE THAT THE POLICE USED THE "DISORDERLY CONDUCT" STATUTE AS A SHAM BASIS FOR THE ARREST, THE REAL AIM OF WHICH WAS TO PRESERVE SEGREGATION, WAS STRONG AND, AT THE LEAST, THERE IS A JURY QUESTION AS TO WHETHER THE POLICE ACTED IN GOOD FAITH SO THAT, THEREFORE, THE COURT BELOW ERRED IN DISMISSING THE DIVERSITY CAUSE OF ACTION.

Even if it is the law in Mississippi (contrary to most jurisdictions) that a policeman is not liable for false arrest merely because the statute under which he made an arrest was subsequently held unconstitutional, the court below erred in concluding that the diversity cause of action should consequently be dismissed.

In the first place, there is the question whether the finding by the County Court that there was no evidence against the ministers under the "disorderly conduct" statute renders the police liable without further inquiry. At the least, there remains a jury issue as to whether the police acted in good faith in reliance on the "disorderly conduct" statute. The jury verdict in their favor does not, of course, resolve that question since the verdict was tainted by the improperly admitted evidence that necessitates reversal.

There is ample support in the record from which a jury could find that the police used the "disorderly conduct" statute as a sham basis for the arrests, the real purpose which was to enforce segregation law and custom.

The police conceded that the ministers were orderly. The ministers' testimony was that there was no threat from others in the waiting room. The police testimony to the contrary was weak and conflicting, reduced under pressure to statements that a few persons were mumbling. The police admitted that they made no effort to calm, caution or restrain such persons. The police stopped the ministers from entering a restaurant where, at least as far as the record shows, there were no such persons, and finally, the County Court found that there was no evidence either that the ministers intended to provoke a breach of the peace or that they entered the terminal "under such circumstances such that a breach of the peace might be occasioned thereby." The waiting room was, by "order of the police" posted for whites only. No Negro had entered without being arrested. The police thought it was wrong for whites and Negroes to be together in bus stations or anywhere else.

Even *Golden* v. *Thompson*, 194 Miss. 241, 11 So. 2d 906 (1943), cited by the Court below to justify its dismissal of the diversity cause of action, requires that the police at least act "in good faith in reliance" on the statute subsequently held unconstitutional. There is, at the least, a jury question as to whether they did so.

ALTHOUGH THE QUESTION NEED NOT BE DECIDED IN VIEW OF THE EVIDENCE THAT THE POLICEMAN USED THE "DISORDERLY CONDUCT" STATUTE AS A SHAM BASIS FOR ARREST, THE FACT THAT THE STATUTE WAS SUBSEQUENTLY HELD UNCONSTITUTIONAL (AT LEAST WHEN COUPLED WITH THE FACT THAT IN THE TRIAL DE NOVO THERE WAS HELD TO BE *NO* EVIDENCE AGAINST THE MINISTERS UNDER THAT STATUTE) SHOULD GIVE RISE TO A DIRECTED VERDICT AGAINST THE POLICEMAN UNDER 42 U.S.C. § 1983.

A. Leaving aside the strong evidence of police bad faith that is present here, the question raised by respondents' cross-petition is whether Congress in 1871 intended to hold liable police officials who arrested persons under statutes subsequently held unconstitutional under the Federal Constitution.

Under the common law, police officers traditionally were liable for making warrantless arrests under a statute that was subsequently held invalid. See Field "*The Effect of an Unconstitutional Statute in the Law of Public Officers: Liability of Officers for Action or Nonaction*," 77 *U. Pa. L. Rev.* 155, 177 (1928). There is no reason to suppose that the 1871 Congress intended to change that rule. The language of section 1983 is directly applicable.

B. In interpreting the predecessor of section 1983, this Court in *Lane* v. *Wilson*, 307 U.S. 268 (1939), held that a person deprived of the right to vote under a state statute subsequently held unconstitutional could sue the official who relied upon the statute for damages.[*] See also *Smith v. Allwright*, 321 U.S. 649

---

[*] The Court's opinion focused upon the issue of whether the statute was constitutional and once it had concluded that it was the Court did not even question the right of the aggrieved voter to sue for damages under section 1983.

(1944). Similarly, this Court has said that "it is immaterial whether [the state official's] conduct is legal or illegal as a matter of state law." McNeese v. Board of Educ., 373 U.S. 668, 674 (1963).

C. Respondents complain of the harshness of holding liable policeman because the state statute under which they claimed to act was subsequently held unconstitutional.** But freeing such policemen from liability is harsh also--harsh on the persons arrested who would not be made whole for the loss suffered through the invalid arrest.

Enforcing an unconstitutional statute may, or may not, be an innocent act. Statutes can on their face be suspect. Mississippi's "disorderly conduct" statute is. So would be a statute that commended segregation. Who should better bear the risk: the policeman who arrests under a repugnant statute, even thoughtthe actual holding of repugnancy is made later, or the person who is arrested under a repugnant statute?

Congress in 1871 came down on the side of the person whose constitutional rights were taken away.

Conclusion

For the reasons stated, it is respectfully submitted that:

1. The judgment of the Court below dismissing the cause of action under 42 U.S.C. § 1983 against Police Justice Spencer should be removed.
2.
3.
4.

**The policeman might be protected by his employer from losses incurred as a result of enforcing an unconstitutional statute.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1966

No. 79

ROBERT L. PIERSON, ET AL., PETITIONERS,

vs.

J. L. RAY, ET AL.

No. 94

J. L. RAY, ET AL., [illegible]

vs.

ROBERT L. [illegible]

[illegible] OF CERTIORARI TO THE [illegible]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 79

ROBERT L. PIERSON, ET AL., PETITIONERS,

vs.

J. L. RAY, ET AL.

No. 94

J. L. RAY, ET AL., PETITIONERS,

vs.

ROBERT L. PIERSON, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

	Original	Print
Record from the United States District Court for the Southern District of Mississippi, Jackson Division		
Complaint	1	1
Motion of defendant, James L. Spencer, to dismiss the complaint as to said defendant or to drop said defendant from the action	9	6

RECORD PRESS, PRINTERS, NEW YORK, N. Y., AUGUST 30, 1966

Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued

	Original	Print
Motion of defendant, J. L. Ray, to dismiss the complaint as to said defendant or to drop said defendant from the action	10	7
Motion of defendant, D. A. Nichols, to dismiss the complaint as to said defendant or to drop said defendant from the action	11	8
Motion of defendant, J. D. Griffith, to dismiss the complaint as to said defendant or to drop said defendant from the action	12	8
Defendants' motion and affidavit for security for costs	13	9
Notice of hearing of defendants' motions for security for costs and to dismiss	15	10
Notice of hearing of defendants' motions for security for costs and to dismiss	16	10
Motion of defendant, James L. Spencer, to dismiss the complaint as to said defendant	17	11
Motion for default judgment	18	12
Motion to clerk to enter default against defendants under Rule 55(a)	19	12
Defendant's answer	20	13
Notice of hearing of defendants' motions for security for costs and to dismiss	24	16
Notice of hearing of defendants' motions for security for costs and to dismiss	25	17
Order sustaining defendants' motion for security for costs	26	17
Order overruling plaintiffs' motion for default judgment	27	18
Order overruling separate motion of each defendant to dismiss the complaint as to said defendant or to drop said defendant from the action	28	18
Notice by the defendants of the taking of the depositions of the plaintiffs as adverse parties under Rule 26	28	19

	Original	Print
Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued		
Order on motion of James L. Spencer to dismiss	29	20
Depository receipt	31	20
Western Union Money Order Message	32	22
Notice by the plaintiffs of the taking of the depositions of the defendants as adverse parties under Rule 26	32	23
Defendants' motion to amend answer	33	23
Order allowing amendment to defendants' answer	35	24
Amendment to defendants' answer	35	24
Transcript of testimony, May 13-16, 1963	37	25
Appearances	37	25
Colloquy between court and counsel	38	26
Voir dire proceedings	40	28
Statement of and questioning by Carl Rachlin, counsel for petitioners	42	29
Statement of and questioning by Tom Watkins, counsel for defendants	80	53
Testimony of James G. Jones, Jr.—direct	86	58
Offer in evidence	107	71
Plaintiff's Exhibit No. 1	108	72
Letter from Police Justice, Hinds County, Mississippi to County Court Clerk, Hinds County, Jackson, Mississippi, dated 10-9-61 transmitting certified copy of record in James Garrard Jones case	108	72
Certificate of James L. Spencer, Police Justice to record, dated 10-9-61	109	73
General Affidavit of J. L. Ray and James L. Spencer sworn to September 15, 1961	110	74
Judgment signed by James L. Spencer, dated September 15, 1961	112	75
Order for cash appeal bond, dated September 28, 1961	113	76
Appeal bond	114	77

	Original	Print
Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued		
Transcript of testimony, May 13-16, 1963—Continued		
Testimony of James G. Jones, Jr.—Continued		
Plaintiff's Exhibit No. 1—Continued		
Letter from Sheriff, Hinds County, Mississippi to Honorable James L. Spencer, Municipal Judge, Jackson, Mississippi	116	79
Motion for leave to amend affidavit	117	80
Order allowing amendment of affidavit	118	81
Order of Judge Moore, dated May 22, 1962	119	82
Clerk's certificate	120	83
Testimony of James G. Jones, Jr.—(continued)—		
direct	122	84
cross	128	87
Offer in evidence—Defendant's Exhibit No. 1	130	89
Pamphlet entitled "Message to the Episcopal Church's 60th General Convention, Detroit, Michigan, September 17-29, From the Clergy on the Prayer Pilgramage Between New Orleans and Detroit, September 12-17" read into record	132	90
Testimony of James J. Jones, Jr.—		
cross	135	92
Offer in evidence and objection thereto sustained	162	109
Testimony of James J. Jones, Jr.—		
redirect	175	117
John B. Morris—		
direct	178	119
cross	201	134
redirect	234	155
Offer in evidence	235	156
Plaintiff's Exhibit No. 2	235	156
Clerk's certificate	235	156

Original Print

Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued

Transcript of testimony, May 13-16, 1963—Continued

Testimony of John B. Morris—Continued

Plaintiff's Exhibit No. 2—Continued

Letter from Police Justice, Hinds County, Mississippi to County Court Clerk, Hinds County, Jackson, Mississippi, dated 10-2-61 transmitting certified copy of record in John Burnett Morris case 236 157

Certificate of James L. Spencer, Police Justice to record, dated 10-2-61 237 157

General Affidavit of J. L. Ray and James L. Spencer sworn to September 15, 1961 238 158

Judgment signed by James L. Spencer, dated September 15, 1961 240 160

Order for cash appeal bond, dated September 18, 1961 241 161

Appeal bond 242 162

Letter from Sheriff, Hinds County, Mississippi to Honorable James L. Spencer, Municipal Judge, Jackson, Mississippi 244 163

Order of Judge Moore 245 164

Clerk's certificate 245 164

Colloquy between court and counsel 246 165

Testimony of John B. Morris—(resumed)—cross 249 167

Offer in evidence 261 175

Defendant's Exhibit No. 2—Communication from John B. Morris, Executive Director, The Episcopal Society for Cultural and Racial Unity, to Clerical Members, dated June 16, 1961 262 176

Testimony of John B. Morris—(resumed)—cross 268 180

Allen Thompson—direct 270 182

Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued

Transcript of testimony, May 13-16, 1963—Continued

	Original	Print
Testimony of John B. Morris—(recalled)—cross resumed	278	187
Offers in evidence	279	187
Defendant's Exhibit No. 3—Communication from John B. Morris, Executive Director to Applicants For the Prayer Pilgramage, written on June 28, 1961	280	188
Defendant's Exhibit No. 4—Communication from John B. Morris, Executive Director to Clerical Members, dated June 30, 1961	287	193
Defendant's Exhibit No. 5—Communication from John B. Morris, Executive Director to The Clergy, dated July—1961	290	196
Defendant's Exhibit No. 6—Communication from John B. Morris to Pilgramage Applicants, dated August 4, 1961	302	205
Defendant's Exhibit No. 7—Communication from John B. Morris to Pilgramage Applicants, dated August 19, 1961	328	222
Defendant's Exhibit No. 8—Communication from John B. Morris to Pilgramage Applicants, dated August 26, 1961	350	238
Defendant's Exhibit No. 9—Communication from John B. Morris to Pilgramage Participants, dated September 2, 1961	353	240
Defendant's Exhibit No. 10—Communication from John B. Morris to Pilgramage Participants	358	244
Testimony of John B. Morris—redirect	362	247
Plaintiff's Exhibit No. 3—Statement by Rev. V. Powell Woodward for Fifteen Episcopal Ministers	371	253

Original Print
Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued
Transcript of testimony, May 13-16, 1963—Continued
Testimony of Robert L. Pierson—
direct 374 255
Offer in evidence 386 264
Plaintiff's Exhibit No. 4 .... 387 264
Clerk's certificate 387 264
Letter from Police Justice, Hinds County, Jackson, Mississippi to County Court Clerk, Hinds County, Jackson, Mississippi, dated 10-2-61 transmitting certified copy of record in Robert Laughlin Pierson case 388 265
Certificate of James L. Spencer, Police Justice to record, dated 10-2-61 .... 389 266
General Affidavit of J. L. Ray and James L. Spencer sworn to September 15, 1961 390 267
Judgment signed by James L. Spencer, dated September 15, 1961 .... 391 268
Order for cash appeal bond, dated September 18, 1961 .... 392 269
Appeal bond 393 270
Letter from Sheriff, Hinds County, Mississippi to Honorable James L. Spencer, Municipal Judge, Jackson, Mississippi 395 271
Order of Judge Moore 396 272
Clerk's certificate 396 272
Testimony of Robert L. Pierson—(resumed)—
direct 397 273
cross 398 274
Defendant's Exhibit No. 11—Article from Redbook magazine, "The Crusading Minister in the Rockefeller Family" 428 294
Testimony of James P. Breeden—
direct 461 317

Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued

Transcript of testimony, May 13-16, 1963—Continued

Testimony of James P. Breeden—Continued

	Original	Print
Offer in evidence	472	325
Plaintiff's Exhibit No. 5	473	325
Clerk's Certificate	473	325
Letter from Police Justice, Hinds County, Mississippi to County Court Clerk, Hinds County, Jackson, Mississippi, dated 10-2-61 transmitting certified copy of record in James Pleasant Breeden case	473	326
Certificate of James L. Spencer, Police Justice to record, dated 10-2-61	474	327
Judgment signed by James L. Spencer, dated September 15, 1961	475	328
Order for cash appeal bond, dated September 18, 1961	476	329
Appeal bond	478	330
Letter from Sheriff, Hinds County, Mississippi to Honorable James L. Spencer, Municipal Judge, Jackson, Mississippi	480	332
Order of Judge Moore, dated April 9, 1962	481	333
Testimony of James P. Breeden—(resumed)—direct	482	334
D. A. Nichols—(Adverse witness)—cross	484	335
J. B. Griffith—(Adverse witness)—cross	492	340
J. L. Ray—(Adverse witness)—cross	503	347
James L. Spencer—(Adverse witness)—cross	510	352

	Original	Print
Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued		
Transcript of testimony, May 13-16, 1963—Continued		
Testimony of James L. Spencer (Adverse witness)—Continued		
Offers in evidence	515	355
Plaintiff's Exhibit No. 6—Pages 21 & 22 of Deposition of James L. Spencer	516	356
Plaintiff's Exhibit No. 7—Pages 28 & 29 of Deposition of James L. Spencer	520	359
Plaintiff's Exhibit No. 8—Page 37 of Deposition of James L. Spencer	527	363
Plaintiff's Exhibit No. 9—Pages 39 & 40 of Deposition of James L. Spencer	535	368
Plaintiff's Exhibit No. 10—Answer on Page 43 of Deposition of James L. Spencer	537	369
Plaintiff's Exhibit No. 11—Question and Answer on Pages 43 & 44 of Deposition of James L. Spencer	539	371
Testimony of Layton P. Zimmer—		
direct	539	371
cross	552	380
redirect	569	391
J. L. Ray—		
direct	571	392
cross	582	400
David A. Nichols—		
direct	587	403
cross	595	409
Joseph D. Griffith—		
direct	598	411
cross	608	417
James L. Spencer—		
direct	613	420
Defendants rest	617	423
Plaintiff's motion for a directed verdict and overruling thereof	617	423
Plaintiff's motion to dismiss, vacate and set aside the defense of probable cause and overruling thereof	622	426

Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued

Transcript of testimony, May 13-16, 1963—Continued

	Original	Print
Defendant Spencer's motion to direct a verdict and enter judgment, etc. and overruling thereof	623	427
Defendants Ray, Nichols and Griffith motion to direct a verdict and enter judgment, etc. and overruling thereof	624	428
Court's instructions to jury	627	430
Exceptions to charge of Court	638	437
Renewal of motion for a directed verdict, to set aside and vacate the verdict of the jury and for a new trial and overruling thereof	641	438
Reporter's certificate (omitted in printing)	644	440
Jury Verdict	645	440
Judgment	645	440
Order denying motion for new trial	647	441
Notice of appeal	648	442
Designation of record (omitted in printing)	649	442
Orders extending time for filing record (omitted in printing)	650	442
Proceedings in the United States Court of Appeals for the Fifth Circuit	653	443
Order denying motion to dismiss	653	443
Minute entry of argument and submission (omitted in printing)	654	443
Opinion, Jones, J.	655	444
Judgment	669	456
Clerk's certificate (omitted in printing)	670	457
Orders extending time to file petition for writ of certiorari	671	457
Orders allowing certiorari	673	459

[fol. 1-2]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

No. 3315

Robert L. Pierson, John B. Morris, James P. Breeden,
and James G. Jones, Jr., Plaintiffs,

v.

J. L. Ray, J. B. Griffith, D. A. Nichols, and
James L. Spencer, Defendants.

Complaint—Filed September 10, 1962

Jurisdiction:

1. Jurisdiction is based upon 28 U.S.C. 1343 and 42 U.S.C. 1981 and 1983 and upon 28 U.S.C. 1332.

2. Each Plaintiff has been damaged in an amount greater than $10,000.00, exclusive of interest and costs.

Nature of Cause of Action:

3. This cause of action is a civil action for damages for deprivation of civil rights and for false arrest and imprisonment of Plaintiffs by Defendants.

Plaintiffs:

4. Plaintiff Robert L. Pierson is an adult male, an Episco-[fol. 3] pal Clergyman, a member of the Caucasion race, and a citizen of the State of New York.

5. Plaintiff John B. Morris is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of Georgia.

Record from the United States District Court for the Southern District of Mississippi, Jackson Division—Continued

Transcript of testimony, May 13-16, 1963—Continued

	Original	Print
Defendant Spencer's motion to direct a verdict and enter judgment, etc. and overruling thereof	623	427
Defendants Ray, Nichols and Griffith motion to direct a verdict and enter judgment, etc. and overruling thereof	624	428
Court's instructions to jury	627	430
Exceptions to charge of Court	638	437
Renewal of motion for a directed verdict, to set aside and vacate the verdict of the jury and for a new trial and overruling thereof	641	438
Reporter's certificate (omitted in printing)	644	440
Jury Verdict	645	440
Judgment	645	440
Order denying motion for new trial	647	441
Notice of appeal	648	442
Designation of record (omitted in printing)	649	442
Orders extending time for filing record (omitted in printing)	650	442
Proceedings in the United States Court of Appeals for the Fifth Circuit	653	443
Order denying motion to dismiss	653	443
Minute entry of argument and submission (omitted in printing)	654	443
Opinion, Jones, J.	655	444
Judgment	669	456
Clerk's certificate (omitted in printing)	670	457
Orders extending time to file petition for writ of certiorari	671	457
Orders allowing certiorari	673	459

[fol. 1-2]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

No. 3315

ROBERT L. PIERSON, JOHN B. MORRIS, JAMES P. BREEDEN, and JAMES G. JONES, JR., Plaintiffs,

v.

J. L. RAY, J. B. GRIFFITH, D. A. NICHOLS, and JAMES L. SPENCER, Defendants.

COMPLAINT—Filed September 10, 1962

Jurisdiction:

1. Jurisdiction is based upon 28 U.S.C. 1343 and 42 U.S.C. 1981 and 1983 and upon 28 U.S.C. 1332.

2. Each Plaintiff has been damaged in an amount greater than $10,000.00, exclusive of interest and costs.

Nature of Cause of Action:

3. This cause of action is a civil action for damages for deprivation of civil rights and for false arrest and imprisonment of Plaintiffs by Defendants.

Plaintiffs:

4. Plaintiff Robert L. Pierson is an adult male, an Episco- [fol. 3] pal Clergyman, a member of the Caucasion race, and a citizen of the State of New York.

5. Plaintiff John B. Morris is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of Georgia.

6. Plaintiff James P. Breeden is an adult male, an Episcopal Clergyman, a member of the Negro race, and a citizen of the State of Massachusetts.

7. Plaintiff James G. Jones, Jr., is an adult male, an Episcopal Clergyman, a member of the Caucasion race, and a citizen of the State of Illinois.

Defendants:

8. Defendant J. L. Ray is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

9. Defendant J. B. Griffith is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

10. Defendant D. A. Nichols is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

11. Defendant James L. Spencer is the police justice and ex-officio Justice of the Peace of the City of Jackson, Missis-
[fol. 4] sippi, and resides in Jackson, Mississippi, and is a citizen of the State of Mississippi.

The Factual Situation:

12. On September 13, 1961, Plaintiffs and eleven other Episcopal Clergymen, amongst whom where two members of the Negro race and nine members of the Caucasion race, traveling in a group on a Prayer Pilgrimage, entered in orderly fashion the Continental Trailways Bus Station in Jackson, Mississippi, about 11:30 A.M. for the purpose of continuing their journey from New Orleans, Louisiana, to Detroit, Michigan to the General Convention of their Church. All possessed tickets to Chattanooga, Tennessee

at such time. The group entered through a front door of the station, in front of which was a sign stating in substance "White Waiting Room Only—By Order of Police Department."

13. After Plaintiffs and the other Clergymen referred to above entered the station Defendants Griffith and Nichols placed Plaintiffs and the others under arrest, after ordering them to move on and after refusal by Plaintiffs and the others to do so.

14. Thereafter Defendant Ray approached Plaintiffs and told them to move on. Plaintiffs refused to do so and were then placed under arrest by Defendant Ray and taken to the Jackson City jail.

15. At no time was there any unusual gathering, occurrence, or circumstances in or near the vicinity of the bus station at or near the time of the arrest of Plaintiffs nor did any person present, including Plaintiffs, create any [fol. 5] disturbance or commit any disorderly acts whatever.

16. Plaintiffs Pierson, Morris, and Breeden were held in jail until Tuesday, September 19, 1961.

17. Plaintiff Jones was held in jail for approximately ten days after the other Plaintiffs were released.

18. Plaintiffs were held, tried, and convicted upon affidavits of Defendant Ray alleging that Plaintiffs "on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there willfully and unlawfully fail or refused

to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi."

19. Defendant Spencer was the judge at the trial held on Friday, September 15, 1961, without a jury at which trial Plaintiffs were tried and convicted on the affidavits mentioned in paragraph 18, supra, and on the testimony of [fol. 6] Defendant Ray. The convictions were based upon violations of Section 2087.5 of the Mississippi Code of 1942, as amended.

20. Plaintiffs Pierson, Morris, and Breeden posted bond and were released from jail on Tuesday, September 19, 1961. Plaintiff Jones posted bond and was released from jail approximately ten days after the other Plaintiffs.

21. The Plaintiffs duly appealed to the Hinds County Court from the Jackson Municipal Court as provided by Mississippi laws. As a necessary consequence of prosecuting their appeals Plaintiffs were required to appear in the Hinds County Court before County Judge Russell Moore for arraignment on October 9, 1961, at which time they pleaded not guilty. Thereafter, on April 10, 1962 Plaintiffs Morris, Pierson, and Breeden were required to return to Jackson for further purposes of prosecuting their appeals. On May 21, 1962 the trial of Plaintiff Jones was held before Judge Moore. At the end of the prosecution's evidence, at which Defendant Griffith testified, the Court, upon Plaintiff Jones's motion, dismissed the case on the grounds that the evidence showed no violation of law. Immediately thereafter the City Prosecutor moved the dismissal of charges against the other Plaintiffs and the eleven other Clergymen referred to above, stating that the evidence in the remaining cases was the same as in the Jones case. This motion was granted.

[fol. 7] Claim I:

22. Defendants, acting severally and in concert, under color of law and under color of Section 2087.5 of the Mississippi Code of 1942, as amended, and under color of the Constitution, laws, policy, customs and usages of the State of Mississippi dealing with segregation of the Negro race from the Caucasion race, subjected and caused to be subjected Plaintiffs to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States in that Defendants have arrested, convicted and sentenced Plaintiffs to jail and confined Plaintiffs therein for the sole purpose of enforcing the segregation laws, customs, policies, and usages of the State of Mississippi.

23. Plaintiffs have been deprived of their rights, privileges, and immunities as citizens of the United States and of the several States to travel freely among the States of the United States, to equal protection of the laws, and to due process of law, among other rights, privileges, and immunities guaranteed by the Constitution and laws of the United States. These rights, privileges, and immunities are guaranteed, in particular, by Article I, Section 8, Clause 3, and the 14th Amendment of the Constitution of the United States and laws passed pursuant thereto.

Claim II:

24. Plaintiffs have been intentionally falsely arrested, con-[fol. 8]fined, detained, and imprisoned by Defendants, acting severally and in concert, without legal cause, process, or justification. At no time about the occasion of their arrests did the Plaintiffs commit any acts justifying their arrests by Defendants Ray, Griffith, and Nichols or their convictions by Defendant Spencer under the section of the Mississippi law with which Plaintiffs were charged with violating, Section 2087.5, or under any of the other laws of the State of Misssisipi.

Statement of Damages:

25. Plaintiffs have each been injured and damaged by Defendants' acts against Plaintiffs in the amount of $10,001.00 for each Plaintiff and each Plaintiff has further been forced to expend the sum of approximately $1,000.00 as a direct and proximate result of protecting and defending himself against the acts of Defendants.

Prayer for Relief:

26. Wherefore, each Plaintiff demands judgment against Defendants, jointly and severally, in the amount of $11,001.00, for a total judgment against Defendants of $44,004.00.

27. Plaintiffs request such other and further relief as is just.

28. Plaintiffs demand that Defendants pay the cost of this action.

Carl Rachlin, 280 Broadway, New York, New York;

William Higgs, Box 4863, Jackson 6, Mississippi;
Attorneys for Plaintiffs.

[fol. 9] William Higgs, One of the Attorneys of Record in this cause and a member of the bar of this Court.

•••

(Summons and Return are not copied here.)

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT, JAMES L. SPENCER, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—Filed September 29, 1962

Now Comes James L. Spencer, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;

[fol. 10] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

MOTION OF THE DEFENDANT, J. L. RAY, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—Filed September 29, 1962

Now Comes J. L. Ray, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;

[fol. 11] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendant.

Statement of Damages:

25. Plaintiffs have each been injured and damaged by Defendants' acts against Plaintiffs in the amount of $10,001.00 for each Plaintiff and each Plaintiff has further been forced to expend the sum of approximately $1,000.00 as a direct and proximate result of protecting and defending himself against the acts of Defendants.

Prayer for Relief:

26. Wherefore, each Plaintiff demands judgment against Defendants, jointly and severally, in the amount of $11,001.00, for a total judgment against Defendants of $44,004.00.

27. Plaintiffs request such other and further relief as is just.

28. Plaintiffs demand that Defendants pay the cost of this action.

Carl Rachlin, 280 Broadway, New York, New York;
William Higgs, Box 4863, Jackson 6, Mississippi;
Attorneys for Plaintiffs.

[fol. 9] William Higgs, One of the Attorneys of Record in this cause and a member of the bar of this Court.

•••

(Summons and Return are not copied here.)

In United States District Court

Motion of Defendant, James L. Spencer, to Dismiss the Complaint as to Said Defendant or to Drop Said Defendant From the Action—Filed September 29, 1962

Now Comes James L. Spencer, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;

[fol. 10] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

MOTION OF THE DEFENDANT, J. L. RAY, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—Filed September 29, 1962

Now Comes J. L. Ray, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;

[fol. 11] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT, D. A. NICHOLS, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—Filed September 29, 1962

Now Comes D. A. Nichols, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;

[fol. 12] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, by Thos. H. Watkins,
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

MOTION OF THE DEFENDANT, J. D. GRIFFITH, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—Filed September 29, 1962

Now Comes J. D. Griffith, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case,

upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;

[fol. 13] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

DEFENDANTS' MOTION AND AFFIDAVIT FOR SECURITY FOR COSTS—Filed October 1, 1962

Now Come the defendants in the above styled and numbered action, by their attorneys, and respectfully move the Court to require the plaintiffs, and each of them, to give security for all costs accrued and to accrue in this action within 60 days after an order of the Court made for that purpose, and in support thereof would show unto the Court the following:

1. That each of the plaintiffs is a nonresident of the State of Mississippi, and that plaintiffs have not, as defendants believe, sufficient property in this State out of which the costs can be made if adjudged against plaintiffs.

2. That defendants have, as they believe, a meritorious defense and that this motion and affidavit are not made for delay.

Wherefore, defendants respectfully move the Court to require the plaintiffs to give security for all costs accrued [fol. 14] and to accrue in this action within 60 days after an order of the Court made for that purpose, and that if the security be not given, as required by said order, this action be dismissed.

J. L. Ray, J. D. Griffith, D. A. Nichols and James L. Spencer;

By: E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendants.

Duly sworn to by J. L. Ray, J. D. Griffith, D. A. Nichols and James L. Spencer, jurats omitted in printing.

[fol. 15]

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY FOR COSTS AND TO DISMISS—Filed October 12, 1962

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on the Fifth Floor of the Federal Post Office Building, Jackson, [fol. 16] Mississippi, at 9:00 a.m. on Friday, November 2, 1962, or as soon thereafter as counsel can be heard.

E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY FOR COSTS AND TO DISMISS—Filed November 8, 1962

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the

District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on the Fifth Floor of the Federal Post Office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, November 30th, 1962, or as soon thereafter as counsel can be heard.

[fol. 17] E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT, JAMES L. SPENCER, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT—Filed November 19, 1962

Now Comes James L. Spencer, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court to dismiss the complaint as to said defendant and as grounds therefor would show unto the Court the following:

1. The complaint does not state a claim upon which relief may be granted as against said defendant.

2. The complaint affirmatively shows that said defendant, in committing the acts complained of, was the duly appointed, qualified and acting City Court Judge and ex-officio Justice of the Peace, and as such had complete jurisdiction over the plaintiffs and the alleged offense committed by them within the territorial jurisdiction of the [fol. 18] Court, and that said defendant, therefore, is immune to civil liability for the matters set out in said complaint.

E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

MOTION FOR DEFAULT JUDGMENT—Filed November 23, 1962

Plaintiffs hereby move the Court for a default judgment against the Defendants in this cause, J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer, for the reason that they have failed to plead or defend as provided by the Federal Rules of Civil Procedure.

The Court is respectfully referred to Rules 55 and 12 of the Federal Rules of Civil Procedure.

More than 20 days have passed since the service of summons and complaints upon all Defendants, and neither answers nor motions provided for in Rule 12 were filed within said time.

Plaintiffs have filed with the Clerk a Motion To Clerk To [fol. 19] Enter Default Against Defendants Under Rule 55(a).

Carl Rachlin, 280 Broadway, New York, New York;

William L. Higgs, Box 4863, Jackson 6, Mississippi,
By William L. Higgs,
Attorneys for Plaintiffs.

IN UNITED STATES DISTRICT COURT

MOTION TO CLERK TO ENTER DEFAULT AGAINST DEFENDANTS UNDER RULE 55(a)—Filed November 23, 1962

Plaintiffs hereby move the Clerk to enter the default of the Defendants in this cause, J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer, for the reason that they have failed to plead or defend as provided by the Federal Rules of Civil Procedure.

The Clerk is respectfully referred to Rules 55(a) and 12 of the Federal Rules of Civil Procedure.

More than 20 days have passed since the service of summons and complaints upon all Defendants, and neither answers nor motions provided for in Rule 12 were filed within said time.

[fol. 20] Carl Rachlin, 280 Broadway, New York, New York;

William L. Higgs, Box 4863, Jackson 6, Mississippi,
By William L. Higgs,
Attorneys for Plaintiffs.

In United States District Court

Defendant's Answer—November 30, 1962

Now Come the defendants in the above styled and numbered action, by their attorneys, without waiving their rights jointly or severally under the motions heretofore filed by said defendants herein, and for answer to the complaint exhibited against them herein would show unto the Court the following:

1. Defendants deny that any of the statutes referred to in paragraph 1 of the complaint are applicable and deny that this Court has jurisdiction over the persons of the defendants or the subject matter of the complaint.

2. Defendants deny the allegations of paragraph 2.

3. Defendants deny that the plaintiffs, or any of them, [fol. 21] have a civil action for damages for deprivation of civil rights or for false arrests or imprisonment of plaintiffs by defendants.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Defendants admit that on or about September 13, 1961, the plaintiffs and others entered the Continental Trailways Bus Station in Jackson, Mississippi, at about 11:30 a. m., but deny each and every other allegation of paragraph 12 of the complaint.

13. Admitted.

14. Admitted.

15. Defendants deny each and every allegation contained in paragraph 15 of the complaint.

16. Defendants deny that plaintiffs, Pierson, Morris and Breeden, were held in jail until Tuesday, September 19, 1961, if by that allegation plaintiffs intend to allege that they were denied the right to obtain their freedom by posting reasonable bonds. Defendants would show further that said plaintiffs remained in jail and refused to post [fol. 22] reasonable bonds intentionally for the purpose of obtaining publicity incident to their presence in jail.

17. Defendants deny that the plaintiff Jones was held in jail for approximately ten days after the other plaintiffs were released if by that allegation said plaintiff intends to allege that he was denied the right to obtain his freedom by posting reasonable bond. Defendants would further show that said plaintiff remained in jail and refused to post a reasonable bond intentionally for the purpose of obtaining publicity incident to his presence in jail.

18. Defendants deny the allegations of paragraph 18 of the complaint except that they admit that said paragraph correctly quotes a part of the affidavit on which plaintiffs were subsequently tried.

19. Defendants admit the allegations of paragraph 19 of the complaint, but would show unto the Court that each of the plaintiffs was represented by competent legal counsel

at said trial and that none of the plaintiffs requested trial by jury.

20. Defendants admit the allegations of paragraph 20, but would show unto the Court that said plaintiffs could have obtained their release any time after their arrest by posting reasonable bonds.

21. Defendants admit that plaintiffs appealed their cases to the County Court of the First Judicial District of Hinds County, Mississippi, and that on or about May 21, 1962, said cases were dismissed by the Judge of said Court, but deny all other allegations of paragraph 21 of the complaint. [fol. 23]

22. Defendants deny each and every allegation contained in paragraph 22 of the complaint.

23. Defendants deny each and every allegation contained in paragraph 23 of the complaint.

24. Defendants deny each and every allegation contained in paragraph 24 of the complaint.

25. Defendants deny each and every allegation contained in paragraph 25 of the complaint.

26. Defendants deny that plaintiffs are entitled to recover any amount of or from any of the defendants.

27. Defendants deny that any of the plaintiffs is entitled to any relief.

28. Defendants deny that the costs should be taxed against said defendants, or any of them.

29. Defendants would further show unto the Court that if said defendants committed the acts complained of, which is specifically denied, such action on the part of the defendants, and each of them, is immune to civil liability to the plaintiffs in this action for the reason that the defendants, Ray, Griffith and Nichols, were duly appointed, qualified and acting police officers of the City of Jackson, Missis-

sippi, and the defendant Spencer was the duly appointed, qualified and acting City Court Judge and ex-officio justice [fol. 24] of the peace of the City of Jackson, Mississippi, and that each act committed by said defendants with respect to the plaintiffs, and each of them, was an official act of an officer or judge requiring the exercise of reasonable judgment which cannot be made the basis of this action for civil liability.

Defendants request a jury trial.

E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY FOR COSTS AND TO DISMISS—Filed December 3, 1962

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on [fol. 25] the Fifth Floor of the Federal Post Office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, December 21, 1962, or as soon thereafter as counsel can be heard.

E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY FOR COSTS AND TO DISMISS—Filed December 5, 1962

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the District Court of the United States for the Southern District of Mississippi in the U.S. District Courtroom on the Fifth Floor of the Federal Post Office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, January 4, 1963, or as soon thereafter as counsel can be hear.

[fol. 26]

E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING DEFENDANTS' MOTION FOR SECURITY FOR COSTS—January 4, 1963

This Day this action came on for hearing on the motion of the defendants to require the plaintiffs to give security for costs accrued and to accrue in this action, and the Court having considered same, is of the opinion that said motion should be sustained.

It is, therefore, ordered and adjudged that each of the plaintiffs is hereby ordered and directed to give security for costs in this action in the amount of $500.00 either in cash or by corporate surety bond to be approved by the Clerk of this Court, and that said security for costs shall be filed with the Clerk of this Court within fifteen (15) days from this date, and that if one or more of the plaintiffs fail to give security for costs in accordance with this order [fol. 27] within the time required, this action shall be dismissed as to such plaintiff or plaintiffs.

Ordered and Adjudged, this 4th day of January, 1963.

Harold Cox, United States District Judge.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT—January 4, 1963

This Day this action came on for hearing on plaintiffs' motion for default judgment against the defendants, and the Court having considered same, is of the opinion that said motion should be overruled.

It is, therefore, ordered and adjudged that said motion be and the same is hereby overruled.

Ordered and Adjudged, this 4th day of January, 1963.

Harold Cox, United States District Judge.

[fol. 28]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING SEPARATE MOTION OF EACH DEFENDANT TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—January 4, 1963

This Day this action came on for hearing on the separate motion of each defendant to dismiss the complaint as to said defendant upon the ground that there is a misjoinder of claims or to drop each defendant from the case upon the ground that there is a misjoinder of parties defendant, and the Court having considered same, is of the opinion that said motions, and each of them, should be overruled.

It is, therefore, ordered and adjudged that said motions, and each of them, be and the same are hereby overruled.

Ordered and Adjudged, this 4th day of January, 1963.

Harold Cox, United States District Judge.

IN UNITED STATES DISTRICT COURT

NOTICE BY THE DEFENDANTS OF THE TAKING OF THE DEPOSITIONS OF THE PLAINTIFFS AS ADVERSE PARTIES UNDER RULE 26—Filed January 15, 1963

The plaintiffs and their Attorneys of Record will please take notice that the defendants will take the depositions [fol. 29] of the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., as adverse parties in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, for purposes of discovery and for use as evidence in this case pursuant to Rule 26 of the Federal Rules of Civil Procedure on Friday, February 15, 1963, and that the taking of said depositions will commence at 8:00 o'clock a.m. on said date and will be continued until the taking thereof shall have been completed.

E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,
Attorneys for Defendants.

•••

Letter to Miss Wharton from Mr. Carl Rachlin, is not copied here.

In United States District Court

Order on Motion of James L. Spencer to Dismiss—January 24, 1963

This Cause coming on to be heard on motion of defendant, [fol. 30] James L. Spencer, to dismiss the complaint of the plaintiffs against him because of his judicial immunity for the acts complained of, and even though the exemptions of a judge are not dependent upon the motives which prompted his judicial action as stated in *Bradley* v. *Fisher*, 80 S. Ct. 646, in the absence of some supporting testimony or affidavits, the Court is unable to determine the question thus presented and is of the opinion that such motion should thus be carried along and decided with the case.

It Is, Therefore, So Ordered And Adjudged by the Court that action on said motion of James L. Spencer to dismiss is deferred for decision and action thereon in the trial of this case on its merits.

So Ordered, this January 24, A. D., 1963.

Harold Cox, United States District Judge.

* * *

Copy of letter from Judge Cox to Mr. Carl Rachlin is not copied here.

[fol. 31]

Certificate of Deposit for Checking Account

Deposited with First National Bank, Jackson, Miss. (Name and location of depositary)	Deposit No. 25 1-31-63 (Date sent)
the sum shown opposite for credit, subject to check, in the disbursing account of—	$1,000.00

Loryce E. Wharton, Clerk, U.S. District Court
(Name and address of officer to be credited)

	Symbol No. 4724

On account of— Registry Fund

(Depositor will insert below his name, title, Department or Agency concerned, and his address)

Loryce E. Wharton, Clerk
U. S. District Court
Southern District of Mississippi
Jackson, Mississippi

SPACE BELOW TO BE USED BY DEPOSITARY ONLY

I certify that the above amount has been received for credit in the account of the Treasurer of the United States on the date shown, subject to adjustment for uncollectible items included therein.

First National Bank, Jackson, Miss.
By (Authorized signature) Teller
1-31-63 /s/ D MOORE
(Date of credit in Treasurer's account)

DEPOSITOR WILL RETAIN THIS COPY

(Information as found on reverse side of bond.)

Western Union Money Order No. RW10301 date 1-30-63
in amount of $1,000.00
paid into court by Rev. John B. Morris as bond for court costs in case:

Robert L. Pierson et al.
vs
J. L. Ray et al.
LP 273 Jackson 3315—Civil

[fol. 32]

WESTERN UNION
MONEY ORDER MESSAGE
(Filed Jan 30, 1963)

Money Sent by Telegraph and Cable to All the World
W. P. Marshall, President

No. A LLF123 120 P EST
JACKSON MISS JAN 30 63 19....
Office Date

To LORYCE WHARTON US DIST COURT
Mr., Mrs. or Miss
SOU DIST OF MISS JACKSON DIVN
Address

Transit time of this money order minutes

The Money Order paid you herewith is from
REV JOHN B MORRIS
Name

at ATLANTA GA and included the following message:

THIS IS THE BOND FOR COURT COSTS ASKED BY JUDGE COX FOR THE SUIT AGAINST J L RAY ET AL

THE WESTERN UNION TELEGRAPH COMPANY

IN UNITED STATES DISTRICT COURT

NOTICE BY THE PLAINTIFFS OF THE TAKING OF THE DEPOSITIONS OF THE DEFENDANTS AS ADVERSE PARTIES UNDER RULE 26—Filed February 13, 1963

The defendants and their Attorneys of Record will please take notice that the plaintiffs will take the depositions of [fol. 33] the defendants, J. L. Ray, J. B. Griffith, D. A. Nichols and James L. Spencer, as adverse parties in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, for purposes of discovery and for use as evidence in this case pursuant to Rule 26 of the Federal Rules of Civil Procedure on Friday, February 15, 1963, and that the taking of said depositions will commence at 1:00 o'clock P.M. on said date and will be continued until the taking thereof shall have been completed.

William Higgs, Box 4863, Jackson 6, Mississippi; Carl Rachlin, 280 Broadway, New York 7, New York; By Carl Rachlin, Attorneys for Plaintiffs.

IN UNITED STATES DISTRICT COURT

DEFENDANTS' MOTION TO AMEND ANSWER—Filed May 13, 1963

Now Come the defendants in the above styled and numbered action, by their attorneys, and respectfully move the Court to permit them to amend their answer filed herein by adding thereto the following:

[fol. 34] 30. Defendants would further show unto the Court that the defendants, Ray, Griffith, and Nichols, had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested at the time of their arrests, and that the defendant, Spencer, had probable cause to believe that the plaintiffs were guilty of the offense for which they were tried at the time of their conviction.

E. W. Stennett, City Attorney, Jackson, Mississippi;
Watkins & Eager, 800 Plaza Building, Jackson, Mississippi; By Thos. H. Watkins, Attorneys for Defendants.

•••

Depositions of J. L. Ray et al, are not copied here.

•••

Depositions of Robert L. Pierson, et al, are not copied here.

[fol. 35] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING AMENDMENT TO DEFENDANTS' ANSWER—May 13, 1963

This Action came on for hearing on the motion of the defendants to be permitted to amend their answer filed herein, and the Court having considered same, is of the opinion that said motion should be and the same is hereby sustained.

Ordered And Adjudged, this 13th day of May, 1963.

S. C. Mize, United States District Judge.

IN UNITED STATES DISTRICT COURT

AMENDMENT TO DEFENDANTS' ANSWER—Filed May 13, 1963

Now Come the defendants in the above styled and numbered action, by their attorneys, and amend their answer filed herein by adding thereto the following:

30. Defendants would further show unto the Court that the defendants, Ray, Griffith, and Nichols, had probable cause to believe that the plaintiffs were

guilty of the offense for which they were arrested at the time of their arrests, and that the defendant, Spencer, had probable cause to believe that the plain-[fol. 36] tiffs were guilty of the offense for which they were tried at the time of their conviction.

E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi; By Thos. H. Watkins, Attorneys for Defendants.

•••

Civil Subpoena, not copied here.

[fol. 37]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3315

ROBERT L. PIERSON, JOHN B. MORRIS, JAMES P. BREEDEN and JAMES G. JONES, JR.,

versus

J. L. RAY, J. B. GRIFFITH, D. A. NICHOLS, JAMES L. SPENCER.

Transcript of Testimony—May 13, 1963

APPEARANCES:

Hon. Carl Rachlin, 280 Broadway, New York 7, N. Y., and Hon. Harry L. Rosenthal, 242½ E. Capitol Street, Jackson, Mississippi, for plaintiffs.

Hon. Thomas H. Watkins, Plaza Building, Jackson, Mississippi, and Hon. E. W. Stennett, County Court House Bldg., Jackson, Mississippi, for defendants.

Be It Remembered that on May 13, 1963, there came on for hearing at Jackson, Mississippi, in the Jackson Division of the Southern District of Mississippi, before the Honorable S. C. Mize and a jury, the above entitled and numbered cause, and upon the hearing of said cause the following proceedings were had and entered of record, to-wit:

[fol. 38]

Colloquy Between Court and Counsel

Mr. Watkins: The defendants would like to take an order permitting a brief amendment to their answer. Copy has been furnished to counsel for the plaintiffs.

The Court: Any objections to the amendment, Mr. Rachlin?

Mr. Rachlin: Yes. We object, first, on the ground the amendment was submitted today. This case has been pending now for quite a few months. We held depositions on this case in February and the depositions to some extent were based on the pleadings as they stood at that time. In addition and perhaps more importantly, the proposed amendment as a matter of law is insufficient. In an action for false imprisonment, which is the gravamen for the complaint before us, there is another allegation with regard to violation of the civil rights laws of the United States—probable cause on the part of a defendant is no ground of defense. I have had incomplete time to check the law, and I have only done that in the interim since Mr. Watkins so kindly gave copy of the papers to me, but there is no doubt in my mind, from the very limited examination I have made—and we have checked the law the best we can—it is not a ground for defense. Even if it were accepted, I would have to move it be dismissed as a ground of defense. So for both those reasons, I ask it be denied.

The Court: Well, under the Rules of Civil Procedure, amendments must be liberally allowed on such reasonable terms as the Court sees proper, so I will overrule the objection and permit the amendment to be made; but I will [fol. 39] give you sufficient time to study it further if you need to—or to the extent of postponing the case to some future date, if it's necessary. If it is immaterial then, of course, it will be taken care of by proper construction; that is, if it is no defense, then it would be stricken, but if it is a defense, then it would be a question for the determination of the jury if the evidence warrants such. So I will permit the amendment to be made under those conditions; that is to say, if you want a postponement of the case, I will grant it.

Mr. Rachlin: I do not seek a postponement. I take exception to Your Honor's ruling, but Your Honor has the last say about these matters.

The Court: You may have the exception even though it is not necessary under the Rules of Civil Procedure.

Mr. Rachlin: I just wanted to emphasize that.

The Court: I understand.

Mr. Rachlin: I understand your ruling does not preclude me from making any motions with regard to this amended pleading during the course of the trial or any time prior to the ending of the case?

The Court: That is right, because if the evidence shows what the amendment alleges to portray, then if it is immaterial, it will be stricken; if it is material, it will go to the jury under proper instructions.

I believe a jury is called for in this case?

[fol. 40] Mr. Rachlin: Yes, sir.

Mr. Watkins: The defendants would like to invoke the rule.

The Court: Very well. Let all the witnesses come around and be sworn.

Mr. Rachlin: We have one witness, one probable witness, who is not present in the courtroom at this time, and I wonder if that might be taken into consideration?

The Court: Yes. If he comes into the courtroom, call the attention of the Court to it so he can go under the rule. If he is not here until tomorrow morning, that will be perfectly all right.

(The rule was invoked)

(All witnesses were duly sworn)

Mr. Rachlin: Your Honor, they are all parties to the action.

Mr. Watkins: Yes, all parties.

The Court: Very well. Parties may remain in the courtroom.

Voir Dire Proceedings

Mr. Watkins: Your Honor, I must inform the Court that apparently three gentlemen don't understand Mr. Rachlin's question, because there are three gentlemen in the jury box who are acquainted with me. Apparently, they did not understand Mr. Rachlin's question.

Mr. Rachlin: Everything he said, Your Honor, was not on the record, and I think it should have been.

[fol. 41] The Court: Yes, I thought we were on the record.

Mr. Rachlin: Let me make a statement for the record.

The Court: Yes, sir.

Mr. Rachlin: At this time I move that the three gentlemen who indicated, at Mr. Watkins' suggestion, that they had some degree of acquaintanceship with him—the exact degree I don't know—and one of the gentlemen who indicated he knew Mr. Watkins also indicated that he knew Judge Spencer, so, accordingly, I ask that they be dismissed for cause, and state that this should be sufficient cause for dismissing them, and dismissed for cause, and I so move.

The Court: I will overrule the motion.

I am going to let you examine the jurors. I asked preliminary questions, and I will now let both sides ask questions of the jury. If there is any juror who is biased, you may challenge for cause.

Mr. Rachlin: May we ask the three jurors, since that was not on the record, if they would indicate their names for the record.

The Court: Yes, you three gentlemen who knew Mr. Watkins, please stand up and give your name to the Court Reporter.

A Juror: My name is Marvin Collum, First National [fol. 42] Bank, Jackson, Mississippi.

The Court: And your name?

A Juror: John Hart Asher.

The Court: And your name?

A Juror: L. W. Hollis.

The Court: You may question them now, Mr. Rachlin.

Mr. Rachlin: I know that the acoustics are not of the best. I have had prior experience. I wonder if I might turn my back to the rest of the courtroom, where I can be heard by you and Mr. Watkins and Mr. Stennett.

The Court: I think so.

Mr. Rachlin: I hope that anyone will speak up if they do not hear what I am saying.

Gentlemen of the Jury, my name is Carl Rachlin, as the Judge indicated a moment ago, and I am from New York, and my associate in this case is a Jackson attorney, Lennard H. Rosenthal, who has his office directly across the street.

As the Judge indicated, this is an action for false imprisonment. I am not certain that in the very brief summary of what the case was about that the Judge indicated, and it isn't terribly important now, because we are not arguing the merits of the case at this time, but on an appeal to the Hinds County Court they were acquitted by Judge [fol. 43] Moore of the offense for which they were charged and convicted before Judge Spencer. They are, therefore, coming into this court today and asking for damages for their arrest, their conviction and their detention in the County jail for a period of time, which will be described in some detail when the witnesses themselves testify. This is the nature of the action.

We will also claim, and I will mention why in a moment, but we also claim that the only reason they were arrested is because they were a group of twelve white and three Negro Episcopal clergymen.

We think the facts will demonstrate that they behaved in an absolutely orderly manner. As I say, this is not a time to argue the case, and I am not doing that; just outlining what this case is about.

Now, given that set of facts, is there anyone who feels that he could not render a fair verdict because four persons from the State of Massachusetts, New York, Illinois and Georgia are suing four residents of Jackson, Mississippi?

Is there any reason why you think that fact of four non-Mississippians suing four Mississipians would influence your judgment against the Plaintiffs in any way? Is there anybody here who feels he could not under those circumstances render a fair verdict?

I take it from the silence that all of you think that you [fol. 44] could render a fair verdict if the facts warranted for the Plaintiffs, in whatever amount of damages may be warranted by the facts.

Now, is there any reason why you could not render a verdict if the facts so warranted against the three of the four Defendants because they are policemen? Would that in any way affect your judgment? For example, do you feel that a policeman is always right, never makes a mistake, or that he has a right to make an arrest if he wants to? Is there anybody here that feels that because the Defendants are policemen that he could not render a fair and just verdict? If the facts so warranted, you could find a verdict for the Plaintiff, is that right, gentlemen?

Now, does the fact that the four Plaintiffs are Episcopalians cause any doubt in your mind as to whether you could or not render a fair verdict in this case? Is there anyone sitting here who feels this may be a factor which may influence his judgment in some way?

I take it, again, from your silence that all of you feel that would not influence you.

Is there anyone here who feels that because this was a group of twelve white men and three Negro clergymen that this would be a factor which would so influence your judgment that you could not render a fair and honest verdict; that these were people who were traveling, as the evidence will later show, from New Orleans to their Church conven-[fol. 45] tion in Detroit, Michigan, and were traveling together, twelve white and three Negros, is this a fact which would influence you in your judgment in some way for or against them?

Your name is what?

Juror: J. F. Edwards.

Mr. Rachlin: Mr. Edwards, I wonder if you mind telling me your occupation.

Juror: Dairy farmer.

Mr. Rachlin: You probably understand me with as much difficulty as I understand you. So we will call it square. You have dairy cattle?

Juror: Yes, sir.

Mr. Rachlin: How far from Jackson?

Juror: Ninety-six miles.

Mr. Rachlin: How big a farm?

Juror: Hundred and sixty acres.

Mr. Rachlin: How many head of cattle?

Juror: Eighty head.

Mr. Rachlin: You have been living around here for a long time?

Juror: All my life.

Mr. Rachlin: This has been your work all your life?

Juror: Yes, sir.

[fol. 46] Mr. Rachlin: Mr. Edwards, these Plaintiffs in a sense want to put themselves in your hands and ask—to use the popular term—a fair shake from you. They feel they have been falsely arrested and they feel that Judge Moore upheld them.

Do you think, if the facts warranted, you could find a verdict for them if you thought the evidence indicated that?

Juror: According to the law and evidence.

Mr. Rachlin: The fact that they were not residents of Mississippi, would that influence you?

Juror: No.

Mr. Rachlin: We are all residents of the United States, aren't we?

Juror: Yes, sir.

Mr. Rachlin: I take it that you have no prejudice against Episcopal clergy?

Juror: No, sir.

Mr. Rachlin: Now, Mr. Fletcher, do you mind telling me your occupation.

Juror: Comptroller with the Jackson Tile and Linoleum Company, Jackson.

Mr. Rachlin: Is this a distribution business?

Juror: Manufacturing business.

Mr. Rachlin: You manufacture here in Jackson?

[fol. 47] Juror: Yes, sir.

Mr. Rachlin: Do you ship all over the United States?

Juror: Just in the Southern states.

Mr. Rachlin: Do you live in Jackson?

Juror: Yes, sir, I live in Jackson.

Mr. Rachlin: How long have you lived here?

Juror: About eight years.

Mr. Rachlin: Where did you come from?

Juror: Ohio.

Mr. Rachlin: You gentlemen shouldn't mind me asking these questions. Maybe some day you will get a chance to ask me a lot of questions. It is part of the process of trying to understand the jury. Sometimes we have feelings in the back of our heads that we don't always, ourselves, appreciate; and all I am trying to do today at this moment is to make absolutely certain that the Plaintiffs and the Defendants, of course, too, receive an absolutely fair trial based upon the law and the facts and nothing more than that, just a square deal. In other words, is there anything about this case which would in some way make you feel you could not render a fair verdict?

The Juror: Not that I know of.

Mr. Rachlin: Any particular prejudice or bias or favor for the Defendants because they are residents of the City of Jackson?

The Juror: No.

[fol. 48] Mr. Rachlin: You think you could render a verdict against them if the evidence warranted it?

The Juror: I think I could give an objective verdict.

Mr. Rachlin: And you could find for the Plaintiff if you thought it was warranted?

The Juror: If warranted, yes, sir.

Mr. Rachlin: How long have you been with the Jackson Tile Company?

The Juror: Eight years.

Mr. Rachlin: Since you came to Jackson?

The Juror: Yes, sir.

Mr. Rachlin: Before that you lived in Ohio?

The Juror: Yes, sir.

Mr. Rachlin: Whereabouts?

The Juror: Jamesville, Ohio.

Mr. Rachlin: Did you live there for a long time?

The Juror: All my life.

Mr. Rachlin: And your name is—

The Juror: Garner.

Mr. Rachlin: What is your occupation?

The Juror: Farm and cattleman.

Mr. Rachlin: Both?

The Juror: Both.

[fol. 49] Mr. Rachlin: You sell cattle and also have a farm?

The Juror: Yes, sir.

Mr. Rachlin: What kind of a farm do you have?

The Juror: Cotton, corn, melons, such as that.

Mr. Rachlin: Are those cash crops, or your garden crops?

The Juror: Cash crops.

Mr. Rachlin: I was up in Alabama last week talking to some of the people and I found out much to my surprise that cotton was still the big crop in Northern Alabama, too. I thought there was more diversification. How long have you had this farm?

The Juror: Ever since my daddy died in 1923.

Mr. Rachlin: That is more than one or two years.

The Juror: Yes, sir.

Mr. Rachlin: I take it you must enjoy what you are doing.

The Juror: Yes, sir.

Mr. Rachlin: How far is your farm from Jackson?

The Juror: About 63 miles.

Mr. Rachlin: Which direction?

The Juror: Southeast.

Mr. Rachlin: What is the nearest town?

The Juror: Mount Olive.

Mr. Rachlin: Mr. Garner, you know these Plaintiffs want [fol. 50] to put themselves in your hands and ask for a fair verdict. Does the fact that three are from the North and one a Georgian, would that influence you?

The Juror: No, sir.

Mr. Rachlin: You feel you are a citizen of the United States as well as a citizen of the State of Mississippi?

The Juror: Yes, sir.

Mr. Rachlin: Could you find a verdict for the Plaintiffs if you thought the facts and the law, as the Judge will give it to you sometime before the end of the trial, warranted it?

The Juror: Yes, sir.

Mr. Rachlin: It wouldn't trouble you because the Defendants are policemen?

The Juror: No, sir.

Mr. Rachlin: Do you think that a policeman ever makes a mistake?

The Juror: Well, everybody makes mistakes.

Mr. Rachlin: Do you feel that a citizen has the right to refuse to obey an illegal order of a policeman?

Mr. Watkins: We object to that. Counsel is interrogating a juror about whether he believes a person has a right to disobey an illegal order of a policeman. That is a hypothetical question.

The Court: Yes, I sustain the objection to that question [fol. 51] because I think it is kind of a mixed kind of question of law and fact, and would have to be considered with the instructions of the Court after the facts are all in. I think that is an unnecessary and unauthorized question.

Mr. Rachlin: May I be heard on that?

The Court: Yes.

Mr. Rachlin: I think it goes to the heart of this case, whether a citizen has a right to refuse to obey an illegal order of a policeman, and if a juror, and this is no discredit upon the juror—

The Court: It depends on what the facts and background are.

Mr. Rachlin: Right.

The Court: I sustain the objection without further argument. You can't define it like, for instance, a citizen who has been enjoined from doing something, even though the injunction was illegal, and doesn't have any right to disobey the instructions. Without going into it in detail, I will hold that is an improper question.

I have already asked, and I will ask again: If you are accepted on the jury, will you follow the instructions of the Court as to what the law is?

The Juror: Yes, sir.

Mr. Rachlin: Thank you, Mr. Garner.

And you, sir, your name is—

[fol. 52] The Juror: James Shoemaker.

Mr. Rachlin: What is your occupation?

The Juror: Air-conditioning mechanic.

Mr. Rachlin: You are on the—

The Juror: The First National Bank.

Mr. Rachlin: You are on the Staff of the Bank?

The Juror: No, sir.

Mr. Rachlin: You are not a private contractor?

The Juror: No, sir, I work for the First National Bank—Air-conditioning operator.

Mr. Rachlin: Do you remember in September of 1961 when these Plaintiffs were arrested?

The Juror: I remember it, but I don't remember the day or month.

Mr. Rachlin: At that time did you form any opinion in your mind about whether they were guilty or innocent of the charges against them when they were arrested?

The Juror: Not to my knowledge, I didn't.

Mr. Rachlin: You have an open mind, is that right?

The Juror: Yes, sir.

Mr. Rachlin: How long have you lived in Jackson?

The Juror: I don't live in Jackson. I live 22 miles north of Jackson at Flora.

[fol. 53] Mr. Rachlin: How long have you lived there?

The Juror: All my life.

Mr. Rachlin: Did you go to school there?

The Juror: Flora High School.

Mr. Rachlin: You have heard the questions I have asked the other prospective jurors. Were you paying attention? Is there anything about this case that you feel would prevent you from rendering a fair and just verdict?

The Juror: I don't think so.

Mr. Rachlin: Sometimes there are things in the back of our minds that don't always show up right away, all of us, and this applies to me as much as to anybody else in this room. All of us carry around a few things that sometimes make you take a certain turn.

There's nothing about the case which will prevent you from rendering a verdict for the Plaintiffs if you thought the facts so warranted?

The Juror: No, sir.

Mr. Rachlin: And do you think a policeman is always right?

The Juror: No, sir.

Mr. Rachlin: Sometimes can be wrong?

The Juror: Yes, sir.

Mr. Rachlin: What is your name?

[fol. 54] The Juror: William Murtaugh.

Mr. Rachlin: I hope you won't mind if I ask your occupation.

The Juror: Pay Master Oil Mill Company.

Mr. Rachlin: I beg your pardon?

The Juror: Pay Master Oil Mill Company.

Mr. Rachlin: What does the company produce?

The Juror: They buy soybeans.

Mr. Rachlin: And you have been with them a long time?

The Juror: Five years.

Mr. Rachlin: Where are they located?

The Juror: About 75 miles north, at Tchula, Mississippi.

Mr. Rachlin: About how many men are employed there?

The Juror: Me, mostly. They have a place here.

Mr. Rachlin: They have an office in Jackson?

The Juror: Yes, all over the country.

Mr. Rachlin: This is what might be called nation-wide?

The Juror: Yes.

Mr. Rachlin: You have been involved in a lawsuit, yourself, ever?

The Juror: No, sir.

Mr. Rachlin: How do you feel about the question I asked some of the other prospective jurors, whether you think a [fol. 55] policeman is always right?

The Juror: No, I don't think they are always right.

Mr. Rachlin: You think they can make mistakes?

The Juror: Yes, sir.

Mr. Rachlin: If you think the policemen in this case made a mistake, and the Judge charges you under the law, are you prepared to award damages to the Plaintiffs based upon the mistake they made?

The Juror: Yes, sir.

Mr. Rachlin: I don't think the Judge is going to tell you what the facts are. The facts will have to be decided by you and other members of the jury. The Judge will merely instruct you as to his understanding of the law. You will be the sole judges of the facts in the case and nothing I say nor anything Mr. Watkins says, and with all respects to this gentleman on my left, nothing he says can control your understanding of the facts in this case.

You will be the sole judges and you and your conscience and your God are the sole judges of the facts. Do you think that with that in mind you could render a fair verdict, and one for the Plaintiff if the facts so warranted?

The Juror: Yes, sir.

Mr. Rachlin: No doubt about it?

The Juror: No, sir.

Mr. Rachlin: Are you Mr. Boyer?

[fol. 56] The Juror: Lawrence E. Boyer.

I work for Ralston-Purina Company of Jackson, Mississippi.

Mr. Rachlin: I guess there isn't a person in the United States who doesn't know them. I know that on the radio in New York we hear about some of their newest products and much of it is made there, is that correct?

The Juror: Yes, sir.

Mr. Rachlin: What is your position?

The Juror: Accounting Manager.

Mr. Rachlin: Are you a certified public accountant?

The Juror: No, sir, not certified.

Mr. Rachlin: How long have you been with them?

The Juror: How long with the company?

Mr. Rachlin: Yes, sir.

The Juror: Be 26 years in August.

Mr. Rachlin: Did they give you a gold watch on your 25th year?

The Juror: No, sir.

Mr. Rachlin: A silver one, or get a medal?

The Juror: No, sir, they gave me some stock.

Mr. Rachlin: That shows real appreciation.

Mr. Boyer, you have heard all the questions I have asked, [fol. 57] and I don't want to repeat them. Is there anything from the questions I have asked all these gentlemen which would cause you to have your conscience stirred by sitting on a jury in a thing of this kind?

The Juror: No, sir.

Mr. Rachlin: If I were to ask you, do you think that a policeman is always right—

The Juror: I would say everybody makes mistakes.

Mr. Rachlin: Including policemen?

The Juror: Everybody.

Mr. Rachlin: Are you Mr. Webb?

The Juror: No, sir. My name is Arthur Strong.

Mr. Rachlin: Is it S-t-r-o-n-g?

The Juror: Strong.

Mr. Rachlin: What is your occupation?

The Juror: Parts Store Manager, automobile parts.

Mr. Rachlin: What is the name of the company?

The Juror: Brooks-Noble Auto Parts.

Mr. Rachlin: Do you live here in Jackson?

The Juror: No, sir, Canton.

Mr. Rachlin: Did you go to school there?

The Juror: Yes, sir.

Mr. Rachlin: Lived there all your life?

[fol. 58] The Juror: Yes, sir.

Mr. Rachlin: How far is that from Jackson?

The Juror: Thirty miles.

Mr. Rachlin: I hope you don't mind, because I don't know. As often as I have been to Jackson, I haven't gotten to other parts of the State. I take it you don't know any of the defendants in this case?

The Juror: No, sir.

Mr. Rachlin: You have no feelings about them one way or the other?

The Juror: No, sir.

Mr. Rachlin: Do you think, asking yourself as honestly as any person is capable of asking himself, that you could render a verdict for the Plaintiffs if the facts so warranted?

The Juror: Yes, sir.

Mr. Rachlin: You don't feel any peculiarities because they are non-residents of the State of Mississippi?

The Juror: No, sir.

Mr. Rachlin: This is a very touchy question, but nevertheless, part of the facts in here, and would the fact that in this group that went into the Continental Trailways station only a few blocks from here that there were 12 white and 3 Negro clergymen, would that influence you?

The Juror: No, sir.

[fol. 59] Mr. Rachlin: Would you think they had a right to do that?

Mr. Watkins: What was that question?

Mr. Rachlin: "Do you think they have a right to be together?"

Mr. Watkins: He is asking a juror a legal question.

The Court: Sustain the objection.

Mr. Rachlin: I wasn't aware it was a legal question.

Mr. Watkins: It certainly is a legal question.

The Court: It could be, because whether he has a right to be there is a question of law under certain circumstances.

I will instruct the jury at the proper time what the law is.

If you are accepted on this jury, will you take the instructions I give you as the law of the case and follow those instructions as the law in the case?

The Juror: Yes, sir.

Mr. Rachlin: Now, sir, would you mind telling me your name.

The Juror: Roy C. Davis.

Mr. Rachlin: D-a-v-i-s?

The Juror: Yes, sir.

Mr. Rachlin: And the first name?

The Juror: Roy.

[fol. 60] Mr. Rachlin: Roland?

The Juror: No, Roy.

Mr. Rachlin: Do you live in Jackson?

The Juror: Canton.

Mr. Rachlin: Do you two gentlemen know each other?

The Juror: Yes, sir.

Mr. Rachlin: The fact that you know each other, would that influence any decision you might make one way or the other?

The Juror: No, sir.

Mr. Rachlin: Would this be a disturbing fact, to find somebody from your immediate community on the same jury with you?

The Juror: No, sir.

Mr. Rachlin: I don't know, but, obviously, at this point nobody knows what conclusions one is going to come to about the case, but do you think if you and he were on opposite sides of the case you could hold out for your side if it was right?

The Juror: Yes, sir.

Mr. Rachlin: It wouldn't disturb you that your home town associate or a person that you know—

The Juror: No, sir.

Mr. Rachlin: I don't want to burden you by repeating myself a good deal. You heard me asking these other gentlemen these questions, and is there anything about the case [fol. 61] that you think would prevent you from rendering a fair or a just verdict?

The Juror: No, sir.

Mr. Rachlin: What is your occupation?

The Juror: Farmer.

Mr. Rachlin: What kind of farmer?

The Juror: Cattle—a cow farm.

Mr. Rachlin: Do you have a garden?

The Juror: Cotton.

Mr. Rachlin: Do you have a garden, too?

The Juror: Yes.

Mr. Rachlin: You have been living on that farm for a long time?

The Juror: All my life.

Mr. Rachlin: Did your father have it before you?

The Juror: Yes, sir.

Mr. Rachlin: It has been in your family a long time?

The Juror: Yes, sir.

Mr. Rachlin: How big a farm is it?

The Juror: Twenty-seven acres.

Mr. Rachlin: Most of it is in cotton?

The Juror: Yes, sir.

Mr. Rachlin: Tell me your name.

[fol. 62] The Juror: Boyd.

Mr. Rachlin: And your full name?

The Juror: Elmer Boyd.

Mr. Rachlin: Are you a machinist?

The Juror: No, I work in the production plant.

Mr. Rachlin: Do you install windows and screens, storm doors and screens?

The Juror: Yes, sir.

Mr. Rachlin: Do you sell these up North?

The Juror: Sell a great deal of them up North.

Mr. Rachlin: Where do you live?

The Juror: East of McComb City.

Mr. Rachlin: How close to McComb?

The Juror: Fourteen miles.

Mr. Rachlin: Did you go to McComb often?

The Juror: Yes, sir.

Mr. Rachlin: May I ask your name, sir?

The Juror: L. W. Hollis.

Mr. Rachlin: Mr. Hollis, you were one of the gentlemen Mr. Watkins indicated that you know Mr. Watkins.

The Juror: Yes, sir.

Mr. Rachlin: I wonder if I might try, but we are trying to find a fair and impartial jury and nothing I say is to cast aspersions on you. I wonder if you could tell us the [fol. 63] extent of Mr. Watkins' acquaintance with you.

The Juror: It goes back many years.

Mr. Rachlin: How often, in the course of time, do you see him?

The Juror: Our offices are in the same building.

Mr. Rachlin: You also have association?

The Juror: Yes, sir.

Mr. Rachlin: Your families visit each other?

The Juror: No, sir.

Mr. Rachlin: Occasionally have dinner with them?

The Juror: He is so much younger than I.

Mr. Rachlin: Judge, did you hear that?

We older fellows, I don't know whether we ought to resent that or not.

How close is your office to Mr. Watkins' office?

The Juror: Mine is on the third, and his is on the eighth.

Mr. Rachlin: Does the fact you are in the building, a fairly large building, bring you together often?

The Juror: We are together quite occasionally. I don't know exactly how to answer that.

Mr. Rachlin: How often would you say you see Mr. Watkins?

The Juror: Every day.

[fol. 64] Mr. Rachlin: Are these just "hello's" and go on?

The Juror: Mostly.

Mr. Rachlin: How often do you have a more extended visit?

The Juror: Well, I haven't had an extended visit with him in some months.

Mr. Rachlin: Would you lean over backwards for him because you knew him?

The Juror: No.

Mr. Rachlin: Sometimes this happens. This happened to me. Do you think you might in a case of this kind be inclined unconsciously to favor the position Mr. Watkins advocates as attorney?

The Juror: No.

Mr. Rachlin: You think you could look him in the eye tomorrow or the next day if you found a verdict against him?

The Juror: I am sure I could.

Mr. Rachlin: It wouldn't disturb you?

The Juror: No.

Mr. Rachlin: What is your occupation?

The Juror: I am with the Citizens Council.

Mr. Rachlin: What position do you have with the Council?

The Juror: Executive Director.

Mr. Rachlin: Do you also know Judge Spencer?

[fol. 65] The Juror: Yes.

Mr. Rachlin: Do you see him as often as you see Mr. Watkins?

The Juror: Just about.

Mr. Rachlin: Mr. Hollis, I don't know too much about the Citizens Council, but I have read a word or two in the papers about it, but do you think in your capacity as Executive Director for the Jackson—or the State of Mississippi?

The Juror: Jackson.

Mr. Rachlin: Do you think that you could render a verdict for the Plaintiffs if the facts warrant it?

The Juror: The facts and the law and the instructions by His Honor.

Mr. Rachlin: You have heard us discuss the facts, as the Judge summarized parts of the complaint, and you heard him mention that three of the Plaintiffs are white and one is a Negro. As I say, I am not an expert in the Citizens Council, but the Citizens Council would frown upon that, whites and Negroes together?

The Juror: We believe in social separation of the races.

Mr. Rachlin: Wouldn't this create a problem in your mind when twelve white men and three negro clergymen are together in a bus station, forgetting any other circumstances which might be involved in a case?

[fol. 66] The Juror: I wouldn't think it would have any effect on my decision. But, of course, I am disturbed.

Mr. Rachlin: I appreciate your candidness. I am sure, given another set of circumstances and if I were asked the questions, I probably would say the same thing. But, aside from the law or the particular merits, you might find this a disturbing factor?

The Juror: I would say every member of the jury would find it so.

Mr. Rachlin: You think every member?

The Juror: Yes, sir.

Mr. Rachlin: You look like a usually intelligent person;

and may I leave the fate of these plaintiffs in your hands, knowing what you have just said to me about you and every member of this jury?

The Juror: I guess that would not be up to me to answer that.

Mr. Rachlin: Could a verdict be rendered for the Plaintiffs in this case at all, after what you have just said?

The Juror: That is not up to me.

Mr. Rachlin: It is an unfair question, but I am asking that question because I think you have been—

The Juror: I consider a fair verdict could be rendered in this case, as in any other case, regardless of that fact.

[fol. 67] Mr. Rachlin: Mr. Hollis, were you Executive Director of the Citizens Council in September of 1961?

The Juror: I was.

Mr. Rachlin: I assume that you read the papers at that time?

The Juror: Yes, sir.

Mr. Rachlin: That was part of your job?

The Juror: Yes, sir.

Mr. Rachlin: I assume you remember when they were arrested?

The Juror: I do.

Mr. Rachlin: Had you formed an opinion about the case from reading it in the papers?

The Juror: No, sir, I have not.

Mr. Rachlin: You really didn't form an opinion when you read about the story?

The Juror: I have not up to this moment formed an opinion.

Mr. Rachlin: There were two different verdicts, one was in the Appeal Court before Judge Moore.

Do you know Judge Moore?

The Juror: Yes, I do.

Mr. Rachlin: Would you give me your name, please.

The Juror: Clifton E. Rhodes.

[fol. 68] Mr. Rachlin: Mr. Rhodes, I wonder if you would mind telling me your occupation.

The Juror: Vice President and Manager of Underwood Company.

Mr. Rachlin: What do they make?

The Juror: Components for homes—houses.

Mr. Rachlin: Where is that and what is that?

The Juror: Framing panels, cabinets, window trim, various kinds of things.

Mr. Rachlin: What is the extent of your territory?

The Juror: Just here in our state.

Mr. Rachlin: Do you have occasion to travel any?

The Juror: Some.

Mr. Rachlin: Do you like to travel?

The Juror: Oh, yes.

Mr. Rachlin: What was the last trip you took?

The Juror: You mean out of the State?

Mr. Rachlin: Yes.

The Juror: I guess it was last fall.

Mr. Rachlin: Where did you go?

The Juror: New York.

Mr. Rachlin: My home town. I hope you had a good time.

The Juror: I did.

[fol. 69] Mr. Rachlin: We like you to be taken care of, just as you do here in Mississippi.

And you are Mr. Webb?

The Juror: Yes, sir.

Mr. Rachlin: Mr. Webb, what is the first name?

The Juror: J. C. M. Webb.

Mr. Rachlin: Mr. Webb, you look like you have had a long and healthy life.

The Juror: Yes, sir.

Mr. Rachlin: What do you do?

The Juror: I'm retired.

Mr. Rachlin: I knew that.

The Juror: I was an operating engineer. I have been in heavy equipment all my life.

Mr. Rachlin: Where did you work?

The Juror: All over eight or ten states; building Army bases and roads, contracting jobs.

Mr. Rachlin: You covered Mississippi, and any other states?

The Juror: Well, worked lots of places in Mississippi.

Mr. Rachlin: Other states, as well?

The Juror: Yes, sir.

Mr. Rachlin: Where else did you work?

[fol. 70] The Juror: Tennessee, North and South Carolina, Alabama, Florida, Arkansas, all over.

Mr. Rachlin: You have covered a good part of the South.

The Juror: Yes. In other words, just where the job calls for us.

Mr. Rachlin: Do you live in Jackson?

The Juror: No, sir, fifty miles east of Jackson in Forrest, Mississippi.

Mr. Rachlin: Is it on the way to Meridian?

The Juror: Yes, sir, on 80 Highway.

Mr. Rachlin: How far from Meridian?

The Juror: About 48 miles from Meridian. It is about half-way to Meridian. I believe it is 80 miles from here to Meridian, and it is about half-way.

Mr. Rachlin: Do you like to serve on juries?

The Juror: No, sir, I don't like it.

Mr. Rachlin: Is there any reason why you couldn't render a fair verdict in this case?

The Juror: I wouldn't think so.

Mr. Rachlin: Do you think you could find a verdict for the Plaintiffs if you thought the facts and the law indicated it that way?

The Juror: Yes, sir.

Mr. Rachlin: And the fact the Defendants may be policemen, or the fact that one of them is a judge, would that be of any influence on you?

[fol. 71]

The Juror: No, sir.

Mr. Rachlin: Let me see if I have the names right.

You are Mr. Edwards; you are Mr. Fletcher, is that right? And you are Mr. Garner?

The Juror: That is right.

Mr. Rachlin: And Mr. Shoemaker, and Mr. Murtaugh, and you are Mr. Boyer. And you are Mr. Strong?

The Juror: Yes, sir.

Mr. Rachlin: And you are Mr.—

The Juror: Roy G. Davis.

Mr. Rachlin: You gentlemen have all heard the various questions I have asked.

Tell me your name.

The Juror: Ben H. Pace.

Mr. Rachlin: What is your occupation?

The Juror: Butane Sales and Service.

Mr. Rachlin: Bottled gas?

The Juror: For home use.

Mr. Rachlin: Sales and Service?

The Juror: Yes, sir.

Mr. Rachlin: You have been with the company a long time?

[fol. 72] The Juror: Yes, sir, about eight years.

Mr. Rachlin: Where do you live?

The Juror: Forrest, Mississippi.

Mr. Rachlin: Do you know Mr. Webb?

The Juror: I do not.

Mr. Rachlin: Then, you wouldn't be influenced by the fact he might be a juror, too, and from Forrest, Mississippi, also?

The Juror: No, sir, I have only lived there six months.

Mr. Rachlin: Where are you from?

The Juror: Canton.

Mr. Rachlin: Do you know the other gentlemen from Canton?

The Juror: Yes, sir, I know them.

Mr. Rachlin: Are you well acquainted?

The Juror: No, sir, not too well.

Mr. Rachlin: These Plaintiffs are asking you to render as fair and honest verdict as you know how. Would the fact that there be people who have some slight acquaintanceship on the jury in some way influence you?

The Juror: No, sir.

Mr. Rachlin: In other words, would you be inclined to agree with him?

[fol. 73] The Juror: No, sir.

Mr. Rachlin: Or against them?

The Juror: No, sir.

Mr. Rachlin: Automatically?

The Juror: No.

Mr. Rachlin: What occupation did you engage in before?

The Juror: In the Navy.

Mr. Rachlin: What years were you in the Service?

The Juror: 1946 to 1953.

Mr. Rachlin: Was Mississippi also your home?

The Juror: Yes.

Mr. Rachlin: After you got out of the Navy you came back home?

The Juror: Yes, sir, that is right.

Mr. Rachlin: When you were in the Navy did you travel around?

The Juror: Yes, sir.

Mr. Rachlin: Where were you stationed?

The Juror: San Diego.

Mr. Rachlin: That is a long way from Mississippi.

The Juror: Yes, sir.

Mr. Rachlin: And your name, sir?

The Juror: B. Y. Felder.

[fol. 74] Mr. Rachlin: What is your occupation?

The Juror: Farmer.

Mr. Rachlin: How long have you been a farmer, all your life?

The Juror: All my life.

Mr. Rachlin: Your daddy had a farm before you?

The Juror: Yes, sir.

Mr. Rachlin: How long has the farm been in your family?

The Juror: I bought my own farm.

Mr. Rachlin: Oh, I see. What kind of farm is it?

The Juror: Just a farm.

Mr. Rachlin: I mean, is it a dairy farm, a cotton farm?

The Juror: Cows and corn.

Mr. Rachlin: What kind of corn do you grow?

The Juror: Feed corn.

Mr. Rachlin: You don't grow corn for—

The Juror: I sell corn.

Mr. Rachlin: Anybody who has eaten fresh corn never could go back to the public market.

What is your home?

The Juror: Magnolia.

Mr. Rachlin: You have heard everything I asked the other people, and is there anything about this case, the people involved here or the defendants which could keep you [fol. 75] from rendering a fair verdict?

The Juror: No.

Mr. Rachlin: Are you sure about that?

The Juror: Yes, sir.

Mr. Rachlin: There is no doubt in your mind?

The Juror: No.

Mr. Rachlin: You don't feel automatically that policemen are right?

The Juror: I don't feel they are always right.

Mr. Rachlin: You started to say something; you had something in the back of your mind?

The Juror: I have been an officer.

Mr. Rachlin: Where were you an officer?

The Juror: Magnolia, in Pike County.

Mr. Rachlin: Were you a police officer?

The Juror: I was a constable and deputy sheriff.

Mr. Rachlin: When was the last time you were?

The Juror: Sixteen years ago.

Mr. Rachlin: Is that before you had a farm?

The Juror: I bought part of it before and part of it after.

Mr. Rachlin: You have been an officer, and do you think it is wrong for a citizen to sue a policeman for false arrest?

The Juror: I wouldn't say it was.

[fol. 76] Mr. Rachlin: What is your name?

The Juror: Collum, M. E.

Mr. Rachlin: What is your occupation?

The Juror: First National Bank.

Mr. Rachlin: Do you have a lot of personnel, in the sense that you deal with other people?

The Juror: Yes.

Mr. Rachlin: I don't want to burden you with questions, but do you think you could render a fair verdict?

The Juror: Yes, sir.

Mr. Rachlin: You see in front of you here the Plaintiffs; and let me ask the same question I asked Mr. Hollis: Do you think the fact there are Whites and Negros together would prejudice you in the case?

The Juror: No, sir.

Mr. Rachlin: In other words, you are as firm as Mr. Hollis?

The Juror: I don't know how firm Mr. Hollis was.

Mr. Rachlin: And you, sir, are Mr. Asher?

The Juror: That is correct.

Mr. Rachlin: Do you know Judge Spencer?

The Juror: Yes, sir.

Mr. Rachlin: And Mr. Watkins?

[fol. 77] The Juror: Yes, sir.

Mr. Rachlin: What business are you in?

The Juror: Real estate.

Mr. Rachlin: Do you sell commercial real estate?

The Juror: Any kind.

Mr. Rachlin: What is the name of your company?

The Juror: I have my own.

Mr. Rachlin: You have lived in Jackson a long time?

The Juror: Yes, sir.

Mr. Rachlin: Did you go to school here?

The Juror: Part of the time.

Mr. Rachlin: Where the other time?

The Juror: Cumberland, Tennessee.

Mr. Rachlin: You are Mr. McEwen?

The Juror: Just a farm.

Mr. Rachlin: I mean, is it a dairy farm, a cotton farm?

The Juror: Cows and corn.

Mr. Rachlin: What kind of corn do you grow?

The Juror: Feed corn.

Mr. Rachlin: You don't grow corn for—

The Juror: I sell corn.

Mr. Rachlin: Anybody who has eaten fresh corn never could go back to the public market.

What is your home?

The Juror: Magnolia.

Mr. Rachlin: You have heard everything I asked the other people, and is there anything about this case, the people involved here or the defendants which could keep you [fol. 75] from rendering a fair verdict?

The Juror: No.

Mr. Rachlin: Are you sure about that?

The Juror: Yes, sir.

Mr. Rachlin: There is no doubt in your mind?

The Juror: No.

Mr. Rachlin: You don't feel automatically that policemen are right?

The Juror: I don't feel they are always right.

Mr. Rachlin: You started to say something; you had something in the back of your mind?

The Juror: I have been an officer.

Mr. Rachlin: Where were you an officer?

The Juror: Magnolia, in Pike County.

Mr. Rachlin: Were you a police officer?

The Juror: I was a constable and deputy sheriff.

Mr. Rachlin: When was the last time you were?

The Juror: Sixteen years ago.

Mr. Rachlin: Is that before you had a farm?

The Juror: I bought part of it before and part of it after.

Mr. Rachlin: You have been an officer, and do you think it is wrong for a citizen to sue a policeman for false arrest?

The Juror: I wouldn't say it was.

[fol. 76] Mr. Rachlin: What is your name?

The Juror: Collum, M. E.

Mr. Rachlin: What is your occupation?

The Juror: First National Bank.

Mr. Rachlin: Do you have a lot of personnel, in the sense that you deal with other people?

The Juror: Yes.

Mr. Rachlin: I don't want to burden you with questions, but do you think you could render a fair verdict?

The Juror: Yes, sir.

Mr. Rachlin: You see in front of you here the Plaintiffs; and let me ask the same question I asked Mr. Hollis: Do you think the fact there are Whites and Negros together would prejudice you in the case?

The Juror: No, sir.

Mr. Rachlin: In other words, you are as firm as Mr. Hollis?

The Juror: I don't know how firm Mr. Hollis was.

Mr. Rachlin: And you, sir, are Mr. Asher?

The Juror: That is correct.

Mr. Rachlin: Do you know Judge Spencer?

The Juror: Yes, sir.

Mr. Rachlin: And Mr. Watkins?

[fol. 77] The Juror: Yes, sir.

Mr. Rachlin: What business are you in?

The Juror: Real estate.

Mr. Rachlin: Do you sell commercial real estate?

The Juror: Any kind.

Mr. Rachlin: What is the name of your company?

The Juror: I have my own.

Mr. Rachlin: You have lived in Jackson a long time?

The Juror: Yes, sir.

Mr. Rachlin: Did you go to school here?

The Juror: Part of the time.

Mr. Rachlin: Where the other time?

The Juror: Cumberland, Tennessee.

Mr. Rachlin: You are Mr. McEwen?

The Juror: Yes.

Mr. Rachlin: What is your job?

The Juror: Forestry Conservation.

Mr. Rachlin: You work for the United States?

The Juror: For Mississippi.

Mr. Rachlin: The fact that there are police officers involved, would that make any difference with you?

The Juror: No.

Mr. Rachlin: You think as an employee of the State you [fol. 78] wouldn't be affected—

The Juror: No.

Mr. Rachlin: —by the fact that other public employees are involved in this case?

The Juror: No.

Mr. Rachlin: Do you feel that police officers are always right?

The Juror: Not every time.

Mr. Rachlin: If you think that the facts warranted it and the law warranted it, that you could find a verdict against the defendants in this case and for the plaintiffs?

The Juror: Yes.

Mr. Rachlin: You know that the plaintiffs are three white and one Negro. Would that affect your verdict?

The Juror: Not a bit.

Mr. Rachlin: Do you remember when this incident arose in September of 1961?

The Juror: Not exactly. I just remember it vaguely.

Mr. Rachlin: Have you formed an opinion about it?

The Juror: No.

Mr. Rachlin: You are Mr. Denson?

The Juror: Denson.

Mr. Rachlin: What is your occupation?

[fol. 79] The Juror: I live on a farm, grow some timber and just a few cattle.

Mr. Rachlin: A gentleman farmer.

The Juror: Well—

Mr. Rachlin: How big a farm?

The Juror: 200 acres.

Mr. Rachlin: That is a good size farm. That is the right size. How many cattle do you have?

The Juror: I own about 20 head.

Mr. Rachlin: Milk cows.

The Juror: Dairy cows.

Mr. Rachlin: I expect you have been on the farm some good time?

The Juror: Yes.

Mr. Rachlin: How long?

The Juror: About 40 years.

Mr. Rachlin: Mr. Denson, you have heard me ask a lot of questions of a lot of people here, and is there any reason why you can't render a fair verdict in this case?

The Juror: I wouldn't think so.

Mr. Rachlin: Do you think policemen are always right in making arrests?

The Juror: I don't imagine they are. I think sometimes [fol. 80] they would be like everybody else—would be wrong sometime.

Mr. Rachlin: Thank you, gentlemen.

Mr. Watkins: My name is Tom Watkins.

I am not going to belabor each one with questions, but I will ask the questions generally.

Each one of you, as I understand it, have said that you will decide this case on the facts as you hear them from the stand and on the law as the Judge gives it to you, and let those two things determine how you will decide the lawsuit. Am I correct? You are not going to listen to anything Mr. Rachlin says as to what is right or wrong nor be swayed by anything I say as to who was right or wrong, but get your facts from the witness stand and the law from the Court, is that correct?

Counsel has asked each one of you whether you believe a policeman could make a mistake, and you have with the utmost honesty said that yes, like other human beings, you think policemen are subject to making mistakes.

I am telling you now that I anticipate you will be instructed by the Court that even if you believe that the policemen made a mistake, in this case, you are not to return a verdict against the Defendants unless you further find from the evidence that it was an intentional mistake made for the purpose of discriminating against the Plaintiffs.

[fol. 81] Mr. Rachlin: I wonder if I might object to these discussions of the law at this point?

The Court: You are objecting to that question?

Mr. Rachlin: Yes.

The Court: Sustain the objection to that question.

I will ask all of you gentlemen, if you are accepted on the Jury, you will take the instructions of the Court as the law of the case and follow those instructions in reaching your verdict.

Will each one of you do that?

(All the Jurors answered that they will.)

Mr. Watkins: I want to further state to this Jury that insofar as our views and interpretation of this case is concerned, we expect the evidence to show that this group of ministers who say they were on their way to Detroit for a church convention, did not go from their homes to Detroit but assembled in New Orleans, Louisiana, not for the purpose of going to Detroit, but for the purpose of coming to Jackson, Mississippi. They called their trip a pilgrimage.

We are going to show, expect to show from the witness stand, that their trip had every earmark, had every facet of other groups who called themselves freedom riders.

Mr. Rachlin: I hate to interrupt, but now we are getting into a summation, and I really think that these other groups—

[fol. 82] The Court: Yes, I believe, Mr. Watkins, without letting you complete your question, I think that will call for a conclusion in advance of what the Jury will do.

I can't instruct the Jury until all the facts are in, and then I will instruct them on what the law is. They have all answered that they will follow the law, so I believe that is an unfair question you were getting ready to propound, and I sustain the objection to it.

Mr. Watkins: All right, sir.

I would like to ask each of you Jurors this question: Do you think that because the Plaintiffs are Episcopal ministers they are always right? In other words, can a minister make a mistake, as well as a policeman; and do each of you believe that is true? In view of the fact that we do have four Episcopal ministers that are plaintiffs in this case, I think it is a duty to my clients to ask you if that fact, or that religion would sway you either for or against the plaintiffs or the defendants in this case. Is there anybody who would be embarrassed to bring in a verdict against four Episcopal ministers, either because of their persoanl relationship or the religions of any others of you?

Does any member of this Jury know now any reason resulting from relationships of the plaintiffs or the relationships of the defendants that he believes would keep him from making a perfectly fair and impartial juror to try this case, fair both to the plaintiffs and the defendants? [fol. 83] Is there any reason we haven't asked you, that you know of, that you feel you couldn't be a fair juror in this lawsuit? If any of you have any, I would like to know at this time.

You all tell me that if you are chosen on this Jury you will decide this case solely on the law and the evidence as you hear it in this courtroom and from the witness stand; is that your feelings, that each of you will do that?

Those are all the questions I have.

The Court: Very well, I will ask the attorneys to meet me in chambers and let the Jury remain seated for a few minutes.

(After Conference in Chambers)

The Court: Let the record show that Mr. L. W. Hollis was challenged for cause by the Defendant and the challenge for cause is overruled.

Mr. Watkins: You said by the Defendant.

The Court: I mean by the Plaintiff. Excuse me, gentlemen.

The following jurors may now be excused, to-wit:

Mr. B. Y. Felder, Mr. John Hart Asher, Mr. F. E. Boyer, Mr. J. M. Webb, and Mr. L. W. Hollis, and Mr. Marvin E. Collum, Jr.

Let the Jury be sworn in.

[fol. 84] A jury was duly empaneled and sworn.

By the Court: Gentlemen of the jury, at this point we are going to take a recess until nine o'clock tomorrow morning, but before we do, I want to instruct you that you now constitute the jury to try this case and it will be your duty not to talk to anybody about this case nor permit anybody to talk to you about it, nor permit anybody to discuss it in your presence or in your hearing. If anyone insists in talking to you or discussing it in your hearing, it will be your duty to report them to the Court. If there is a discussion going on in your hearing, then it will be your duty to leave if you can conveniently do so; but if you were so that you could not conveniently leave, then it would be your duty to tell such person that you are on this jury and not to discuss it in your presence. If he continues to do so, then it will be your duty to get his name and report him to me. It will be further your duty not to read any newspaper reports or listen to television or radio matters discussing this case if such should occur.

If I let you separate, will you obey those instructions? You will do that, all of you? Very well. Separate and be back tomorrow morning at nine.

Whereupon the court was recessed.

Tuesday, May 14, 1963, the trial was resumed.

Mr. Rachlin: At the time the witnesses were sworn yes- [fol. 85] terday, I indicated there was a witness who was not present in the court, but who I anticipated would arrive this morning. He has in fact come, and I would like to have him come and be sworn.

Mr. Watkins: Chief Ray was not in the room yesterday, and I would like to have him sworn at the same time.

The Court: Very well.

Witnesses were duly sworn.

The Court: I will permit you to make a short statement to the jury as to what you proceed to prove in the lawsuit.

Mr. Rachlin states the plaintiff's case.

Mr. Watkins states the defendants' case.

The Court: Gentlemen of the jury, in order that you may know what has foregone, the law permits and the rules of this court permit the lawyers to make a statement to the jury as to what they propose to show. The statements of the lawyers, neither Mr. Watkins nor Mr. Rachlin, is not evidence in the case, but are simply to give you a perspective of what the evidence may show. You will make up your verdict, of course, from the sworn testimony you hear on the witness stand.

Whom will you have?

Mr. Rachlin: Before I call the first witness, I would like to note for the record my objection to the opening statement [fol. 86] of Mr. Watkins as being inflammatory and solely for the purpose of prejudice and prejudicing the jury, and having nothing to do with the merits of this case.

The Court: I sustain the motion and exclude the remarks. On my own motion, I will exclude it, Mr. Rachlin. This is a matter of courtesy, Gentlemen of the jury, to permit the lawyers to state to the jury what they expect to show, and the effect is, as I just told you, for the purpose of advising you, not what the facts are but what they expect the witnesses to testify to; so that since there has been such a wrangle about it, you can just disregard the remarks of both lawyers, and I am going to let them put their testimony on, and at the conclusion of the testimony they will then argue the case to you, and I will then instruct you on what the law is. So you may just disregard everything that has been said by each of the lawyers.

Mr. Rachlin: As our first witness, we'd like to call Reverend James G. Jones.

James G. Jones, Jr., called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. You are normally called Father Jones? Is that correct?

[fol. 87] A. That is correct.

Q. I am going to refer to you in that manner. Where is your residence?

A. I live in Chicago, Illinois.

Q. State the exact residence.

A. 4925 South Woodlawn Avenue.

Q. With whom do you reside?

A. My wife and five children.

Q. Will you tell us how you are employed?

A. I am a priest of the Episcopal Church. I am directly under the supervision of the Bishop of Chicago, assigned as the supervising priest for the prison chaplaincy work of the diocese.

Q. Is that what is known as St. Lennox?

A. Part of the work involves St. Lennox House, which is a rehabilitation center for ex-prisoners.

Q. Very briefly, tell us then what is your role in the work you do. What do you perform?

A. Well, I'm boss. There are eight priests, some of them assigned in the prisons, some of them working with men as they get out, men and women, psychologists, case workers, cooks, employment directors— The whole idea is to take men out of these institutions and get them started [fol. 88] in society so that crimes will not be committed as they get out.

Q. Now, did you serve in the service?

A. I was in the United States Navy in World War II.

Q. Any particular part of the Navy?

A. I was originally a Seabee; later a deep sea diver, and for approximately a year was a member of the permanent Shore Patrol stationed in Sicily.

Q. As a member of the shore patrol, did you have occasion as part of your duties to work with and handle large groups of people?

A. Yes. As a matter of fact, all of Sicily was under martial law during the occupation, and there were occasions where we handled large groups of people and one particular case where we did handle an occasion of violence.

Q. So you have had some experience with ugly crowds?

A. Yes, sir.

Q. I want to draw your attention to September 13, 1961. Were you in Jackson, Mississippi, on that day?

A. Yes, I was.

Q. Where had you come from?

A. I had come from Tougaloo College where I had spent the night, took a taxi to the bus station.

[fol. 89] Q. How many people were you accompanying at that time?

A. In my particular taxi there were five people. The seats were full, and there were three taxis.

Q. And a total, all told, in the group?

A. 15 clergymen on their way to St. Mary's and St. Andrew's in Chattanooga, Tennessee.

Q. Had you already purchased a bus ticket?

A. The tickets were already purchased, yes.

Q. Did you know what time the bus was scheduled to leave?

A. As I recall, it was at 12:05 or a minute or so within that time. It was in the afternoon.

Q. What time did you arrive, if you remember, at the Continental Trailways Bus Station near this courtroom?

A. About 11:20 or 25, something like that.

Q. Did all the taxicabs arrive at the same time?

A. Yes, they pulled in one behind the other where the taxis unload.

Q. What did you do after you got out of the taxicab?

A. Paid the man for driving us, and he took his suitcases and handed them to us, and we walked in the front door of the bus station.

Q. Approximately how far was it from the place where the taxi driver let you off to the entrance to the station [fol. 90] where you entered the station?

A. 50 or 60 feet, I suppose. A very short distance.

Q. About how long did it take you to make that walk?

A. Gosh, I imagine a minute. I don't think it would have taken longer than that.

Q. Did all 15 of you walk in at the same time?

A. Well, sort of. I mean, there were double doors, and you open them, and we went in two or three at a time. 15 didn't surge through at one single moment.

Q. Did you have an opportunity to observe whether there were any people on the street following you into the station?

A. There certainly weren't that I could see, no, sir.

Q. Were you one of the first into the station, of the 15 Episcopal clergymen?

A. There were a few priests ahead of me, but I was sort of at the head of the group, yes.

Q. Do you recall what direction you walked just as you entered the station?

A. As we entered the station, we turned to the left, and there's a little news and chewing gum thing there, and we walked by that toward the lunch—sandwich place—because we had a half hour to get on the bus and, as I understood, there was no possibility of eating after that happened, [fol. 91] once we got on the bus to go to Chattanooga.

Q. Do you know approximately how long it would take by bus from Jackson to Chattanooga?

A. It was a long trip. As I recall, we wouldn't get there until late at night.

Q. After you entered the station and all of you started to walk toward this lunch room you refer to, what happened at that point?

A. Well, there were two police officers standing close to the front of the bus station.

Q. Front? You mean near the entrance?

A. Yes. They were facing the two front doors, and we walked by them.

Q. Did you hear anything as you walked by them?

A. Yes, I did.

Q. What did you hear?

A. I heard one mention to the other— To this day I could not tell you which officer said it to whom, but it was, "Shall we get them now or later?"

Q. Do you see the two officers you have just mentioned in this courtroom today?

A. Yes, they are both here.

[fol. 92] Q. Could you stand up for a moment and point them out to us and to the jury?

A. One is the gentleman in blue on one side of Chief Ray, and the other is the gentleman in blue on the other side of Chief Ray.

Mr. Rachlin: Could we ask these persons to identify themselves for the record?

The Court: Yes.

Mr. Rachlin: I wonder if you would mind standing, the gentleman to the left of Chief Ray?

Gentleman: Joseph David Griffith.

2nd Gentleman: David Allison Nichols.

Q. Did you continue walking in the direction you were walking after you heard this?

A. Oh, yes. Sure, I walked right on past the newsstand and into the restaurant, at which point one of the policemen said, "All right. Hold it right there."

Q. Was that one of the two you have just described?

A. Yes, sir.

Q. Will you describe the tone of voice that was used at that point?

A. Well, it seemed to me an extreme hostile tone of voice. I didn't particularly feel that it was said with very much [fol. 93] dignity or respect.

Q. Did you hear any of your fellow clergymen make any loud noises as you entered the station?

A. No, no. They were quiet.

Q. Did you hear them utter any obscene remarks?

A. No.

Q. Did you see them litter the floor of the station in any way?

A. No. One of them might have dropped a cigarette butt, but I don't know.

Q. Did any of them make any threatening gestures to anybody in the station or to themselves?

A. No. There were no such things as that.

Q. Now, did you observe, if you had the chance, any substantial number of people enter the station immediately after you?

A. I saw none of this.

Q. What do you mean by "none of this"?

A. None of this so-called crowd of people. I'm sure we were not the last people to enter this door. There was normal bus passenger traffic taking place, 10 or 15 people in the station, some sitting, some buying tickets, some at the newsstand; but this surge of crowd I did not see.

Q. Did you hear any unusual noises from the people in [fol. 94] the station after you got in the station?

A. No, I didn't.

Q. Did any of them make any threatening gestures towards you or the other clergymen with you?

A. No, sir, I saw nothing like that.

Q. Did any of them shout or make any loud remarks directed toward you or any of the other clergymen?

A. Well, the policemen—

Q. —Except for the policemen?

A. Except for the policemen, no.

Q. Were you able to observe any unusual disturbance among the people in the station at this time?

A. No, I saw nothing like that.

Q. And you have described your experience with the Navy Shore Patrol, is that right, in handling large crowds?

A. Yes. It seems to me that when there are tense situations, if you are experienced in this, you have a feeling of that kind of electricity which is in the air. I know in prisons we on occasions have prison riots. I have been in three of them. You can tell almost when things are tense inside of a situation, and I did not have that feeling. There was not this tense kind of feeling in the crowd. It seemed to me to be a rather normal bus traveling group of people [fol. 95] who were going about their business.

Q. After one of the officers said, "Hold it up," or whatever the words, what took place at that point in your vision or in your hearing?

A. It was right at the entrance of the restaurant and at the foot of the stairs leading up to the ladies' lounge.

Q. Did you hear or see anything right after the officer said "Hold it up"? Did they say anything else?

A. Well, the first thing I heard was, there were two rather elderly ladies come downstairs from the ladies' lounge and were sort of surprised their way was blocked and they couldn't get by. And everybody tried to let the poor ladies out—by.

Q. Did you observe any hostility on their part?

A. No. The doorway was clogged, and I'm sure they wanted to go about their business.

Q. What was the next thing the policemen said?

A. "You all move along."

Q. Did you or any of the other clergymen in your hearing say anything?

A. Yes, asked him what he meant, that we were interstate travelers and had tickets, our bus was leaving at [fol. 96] twelve-something—12:05—and that we were hungry, wanted to eat and get on our bus; why was he asking us to move along? What were we doing wrong?

Q. Is that what was asked of him in your presence?

A. Yes.

Q. Were you the one who asked this?

A. I asked some of these questions. There were other clergymen that asked other questions.

Q. What was their reply to you, if any?

A. There was no reply. It was, "I'm telling you to move along."

Q. What was the next thing that happened?

A. He asked the third time, "I'm telling you to move along. Do you understand what I'm telling you?" and placed us under arrest.

Q. Do you recall which one of the officers it was who said to you or to the group, "You are under arrest"?

A. Yes. Officer Griffith placed us under arrest.

Q. That is one of the defendants in this case? Is that right?

A. Yes, sir.

Q. Was the other one standing there at the time?

A. Yes. As a matter of fact, the other officer, Nichols, was the one who seemed to do most if not all the questioning, but Officer Griffith was the one who made the actual [fol. 97] arrest.

Q. Then what happened immediately after that?

A. Well, said "Put your suitcase down; just stay right there."

Q. Did any of you move away?

A. No, we all, as a matter of fact, bowed our heads and began to recite the Lord's Prayer. Not loudly; just softly. It's rather a frightening experience to be placed under arrest.

Q. So how long did that take? Would you know?

A. I suppose it takes a minute or two to say the Lord's Prayer.

Q. Then what happened after that?

A. Well, we just stood there and waited to be told what to do.

Q. At this moment, which direction were you facing?

A. I was facing with my back to the ladies' lounge and restaurant.

Q. Would that be toward the front entrance, generally speaking?

A. Yes, toward the newsstand and the front doors and ticket place.

Q. Where were the officers in relation to you?

A. One had gone off somewhere—apparently was telephoning. And the other was standing very close to me over to the side.

Q. Was he facing toward you?

A. At times, and at times they were facing the other way.

Q. Was there any crowd standing behind you?

[fol. 98] A. I saw no such crowd. There seemed to me to be about the same number of people after we were placed under arrest and before. I don't think there is any doubt that people were sort of looking. I don't blame them. It's an unusual thing to see in a bus station 15 priests under arrest or stopped.

Q. Did you hear any unusual hubbub in the station at this time?

A. No, it was extremely quiet, as a matter of fact. I know I looked up at one point while the Lord's Prayer was going on, and it appeared to me as if someone of the persons was praying with us; at least, their lips were moving similarly.

Q. I take it at this point you didn't observe any threatening gestures by any of the persons in the station at that time?

A. I saw no threatening gestures by anyone except the officers that stopped us, and, of course, that threat was only verbal, not physical.

Q. Now, how long after did Chief Ray—then Captain Ray—arrive?

A. Three or four minutes, I suppose.

Q. Did you observe him come into the station?

A. Yes.

Q. Just tell us what did you see him do. —Let me re-[fol. 99] phrase the question: Did you see him come in the entrance?

A. Yes.

Q. What entrance did he come in?

A. The rear entrance where the buses load.

Q. Is that on the opposite side of the station you entered from?

A. The opposite side.

Q. Tell us in your own words exactly what you saw him do and then what he said, if anything.

A. He very calmly walked across the bus station.

Q. Did he stop?

A. No.

Q. Did he come directly toward you?

A. Came directly toward the group.

Q. Did he look around?

A. I didn't notice him look around at all. Just sort of half smiling. He walked calmly, with dignity, straight to where we were.

Q. Then what took place?

A. He again said to us, "I want you to move along. I'll see you safely on your bus." And we again said to him that we didn't understand why he was doing this. —By the way, we were able to call him by his name because he had a little name plate here. —And said, "Mr. Ray, we are trying [fol. 100] to get something to eat. We have about half an hour before our bus leaves. Please let us eat and get on our bus and go quietly on our way to Chattanooga. He again asked us to move along, and he also placed us under arrest.

Q. Then what happened immediately after that?

A. We were taken out the door where we should have been catching our bus and instead we caught a paddy wagon. We were taken over to the end of the ramp where we waited a few minutes. One of our members was carrying a little Bible, and he read a few verses to us and we were put into the paddy wagon with our baggage and taken to the police station. There we were fingerprinted—And I understand my fingerprints are still in Washington as this culprit—photographed, interrogated by detectives, put into a bull pen, and later taken to court.

Q. You used the word "bull pen." I'm not sure I understand what you mean. Tell us what you mean by "bull pen."

A. I guess in different parts of the world they call this octangular cell block with dormitory type beds in it a tank or bull pen. In other words, we were put into a common cell.

Q. How many people does a cell normally hold?

A. I suppose 30, 35 maybe.

[fol. 101] Q. Were you the only ones in that cell?

A. Yes.

Q. Just the 12?

A. 15 were put in the cell.

Q. All 15 of you were arrested? Is that correct?

A. That is correct.

Q. And taken— And did you observe all of them go through the same procedures as you went through?

A. No, I couldn't observe all going through this procedure because they took us one by one. Afterward, they tole me that everything that happened to me happened to them.

Mr. Watkins: We object to what they told him.

Mr. Rachlin: I consent to that.

The Court: Objection sustained.

Q. You are not allowed to guess what took place; only describe what you saw, heard and observed. You can't surmise what took place out of your earshot or eyesight. Among the group that were arrested, was Mr. John Morris, one of the plaintiffs, involved?

A. Yes.

Q. Was Father Breeden one of those arrested?

A. Yes, he was.

Q. Was Father Pierson one of those arrested?

[fol. 102] A. Yes, he was.

Q. Did you know that they were all taken to the jail together?

A. Oh, yes.

Q. Do you know what this jail was called?

A. Did I know?

Q. Do you know what this jail is called?

A. City jail.

Q. Where is the city jail located?— Not the street. What city?

A. Jackson, Mississippi.

Q. You have described what took place to you personally. And then you were all placed in this common cell? Is that right?

A. Yes.

Q. Now, what day of the week was this, if you recall?

A. I think a Tuesday. It was the 13th, whatever that was.

Q. September 13th? Is that the correct date?

A. Yes.

Q. What year?

A. 1961.

Q. Were you told what you were charged with?

A. Yes.

Q. What was it?

A. Breach of the peace.

Q. —

[fol. 103] Mr. Watkins: We object to that. What he was charged with would be a matter of record.

Mr. Rachlin: He was told by the officer.

The Court: Just a minute. Objection overruled. That is what one of the defendants in the case told him. Anything any defendant in the case told him he can testify to.

The Witness: Then I withdraw it. I was not told by a defendant.

Q. All right. Let me take you back to the station for a minute. Did any of your brother priests, after you were placed under arrest, ask one of the officers what was the charge?

A. Yes. Mr. Morris asked Captain Ray.

Q. Did you hear Mr. Morris ask the question?

A. I did.

Q. What was the question he asked?

A. "On what charge are we arrested?"

Q. Did you hear what Captain Ray said?

A. Captain Ray said, "Breach of the peace."

Q. Let us go back to the jail. How long after you were arrested were you tried/in Judge Spencer's court?

A. I think it was two days.

[fol. 104] Q. Did you remain in jail during that time?

A. Yes.

Q. Had bail been set?

A. I don't think so. It was no mention from anyone about bail.

Mr. Watkins: We object to what he thinks.

The Court: Sustain the objection as to what he thinks. If he has a memory of anything, he can give his best recollection as to his memory.

A. Can I give a recollection of my non-memory? I don't remember.

Q. Of course, if you don't remember, say you don't remember. Now, did you appear in court for trial before Judge Spencer?

A. Yes, sir.

Q. Without going into details of the trial, were you acquitted or convicted at/that trial?

A. I was convicted and sentenced.

Q. What was the sentence?

A. Four months' incarceration and $200.00 fine.

Q. By the way, did you plead innocent or guilty?

A. Innocent.

Q. After sentence was imposed by Judge Spencer, was it imposed right after the trial?

[fol. 105] A. Yes, sir, right then.

A. Yes, he was.

Q. Was Father Pierson one of those arrested?

[fol. 102] A. Yes, he was.

Q. Did you know that they were all taken to the jail together?

A. Oh, yes.

Q. Do you know what this jail was called?

A. Did I know?

Q. Do you know what this jail is called?

A. City jail.

Q. Where is the city jail located?— Not the street. What city?

A. Jackson, Mississippi.

Q. You have described what took place to you personally. And then you were all placed in this common cell? Is that right?

A. Yes.

Q. Now, what day of the week was this, if you recall?

A. I think a Tuesday. It was the 13th, whatever that was.

Q. September 13th? Is that the correct date?

A. Yes.

Q. What year?

A. 1961.

Q. Were you told what you were charged with?

A. Yes.

Q. What was it?

A. Breach of the peace.

Q. —

[fol. 103] Mr. Watkins: We object to that. What he was charged with would be a matter of record.

Mr. Rachlin: He was told by the officer.

The Court: Just a minute. Objection overruled. That is what one of the defendants in the case told him. Anything any defendant in the case told him he can testify to.

The Witness: Then I withdraw it. I was not told by a defendant.

Q. All right. Let me take you back to the station for a minute. Did any of your brother priests, after you were placed under arrest, ask one of the officers what was the charge?

A. Yes. Mr. Morris asked Captain Ray.

Q. Did you hear Mr. Morris ask the question?

A. I did.

Q. What was the question he asked?

A. "On what charge are we arrested?"

Q. Did you hear what Captain Ray said?

A. Captain Ray said, "Breach of the peace."

Q. Let us go back to the jail. How long after you were arrested were you tried/in Judge Spencer's court?

A. I think it was two days.

[fol. 104] Q. Did you remain in jail during that time?

A. Yes.

Q. Had bail been set?

A. I don't think so. It was no mention from anyone about bail.

Mr. Watkins: We object to what he thinks.

The Court: Sustain the objection as to what he thinks. If he has a memory of anything, he can give his best recollection as to his memory.

A. Can I give a recollection of my non-memory? I don't remember.

Q. Of course, if you don't remember, say you don't remember. Now, did you appear in court for trial before Judge Spencer?

A. Yes, sir.

Q. Without going into details of the trial, were you acquitted or convicted at/that trial?

A. I was convicted and sentenced.

Q. What was the sentence?

A. Four months' incarceration and $200.00 fine.

Q. By the way, did you plead innocent or guilty?

A. Innocent.

Q. After sentence was imposed by Judge Spencer, was it imposed right after the trial?

[fol. 105] A. Yes, sir, right then.

Q. What happened thereafter?

A. We were put back in jail.

Q. Do you know at this point whether bail was set, if you recall?

A. Yes. Bail was then set at $500.00.

Q. Did you have the $500.00?

A. I did not.

Q. Do you recall then when it was that you received sufficient money for bail?

A. It was either 19 or 21 days later. I just cannot remember exactly the amount of days I was inside the jail. It was approximately three weeks.

Q. In other words, you stayed in jail from the date of the conviction for another additional 19 more days?

A. Yes.

Q. That was until bail was received? Is that correct?

A. That is correct.

Q. Do you know where the bail money came from?

A. The bail money came from a collection being made in my diocese, various churches. Since there were two priests from the diocese, when a thousand dollars was collected, they sent it to my lawyer and he posted bond.

[fol. 106] Q. Now, did you enjoy your stay in jail?

A. No, sir.

Q. Describe what the conditions were like.

A. Well, I was not mistreated physically in jail or bitten by bugs or anything like that. It was a clean jail, and I was treated well. My only complaint was, A, being there—I think I had no business being there; and, B, I did not like the food and lost some nineteen pounds during that period.

Q. During the period you were in jail, you say you lost nineteen pounds?

A. Yes.

Q. Did this have any effect on your health?

A. I doubt serious effect.

Q. How long did it take you to gain back that weight?

A. Two or three months.

Q. Other than that, I take it your health was not impaired other than the loss of weight?

A. No.

Q. You had no permanent effects?

A. No.

Q. Did you instruct attorneys to appeal this conviction?

A. Yes.

[fol. 107] Q. Did you appear in court on subsequent occasions on appeal?

A. Yes, sir.

Q. Do you know who was the judge presiding on that occasion?

A. Judge Moore.

Q. Was that Judge Russell Moore of the Hinds County Court?

A. Yes, sir.

Q. Was your case the first case tried on the appeal?

A. Yes, I was the first one.

Q. Were you present when Judge Moore made a decision in that case?

A. I was.

Q. Did you hear what he said?

A. He said I was not guilty of having done anything wrong.

OFFER IN EVIDENCE

Mr. Rachlin: At this point, I would like to offer a document in evidence. I don't know whether this is certified or attested to, but it bears the signature of H. T. Ashford, Circuit and County Court, Hinds County—I'm sorry. It doesn't bear the signature of Mr. Ashford. It apparently bears the signature of Robert E. Lilly. I would like to ask Mr. Rosenthal to give the information about what this document is, with your permission, Your Honor.

Mr. Rosenthal: This is the complete court finding of the [fol. 108] appeal to County Court from Judge Spencer's court on appeal. It is attested to, as required by Rule 44a of the Rules of Civil Procedure. It is signed by a deputy clerk, as the Rule provides.

The Court: That is the Judgment of Acquittal?

Mr. Rosenthal: This is the complete record of every paper transferred up on appeal.

The Court: Very well.

Mr. Watkins: May we look at it?

The Court: Yes.

Mr. Rachlin: May the record show Mr. Rosenthal submitted the document to Mr. Watkins?

The Court: Yes.

Mr. Watkins: No objection.

The Court: Hand it to the court reporter.

(Same received in evidence and marked as Plaintiff's Exhibit No. 1, which exhibit follows here below:)

Plaintiff's Exhibit No. 1

(Filed Oct. 10, 1961)

October 9, 1961

County Court Clerk
Hinds County Courthouse
Jackson, Mississippi

Dear Sir:

Section 1205 of the Mississippi Code of 1942 provides [fol. 109] that "The Justice of the Peace, or Mayor, or Police Court from whose judgment convicting of a criminal offense an appeal shall be taken, shall at once transmit to the Clerk of the Circuit Court the bond taken by him and a certified copy of his record in the case, with all the original papers in the case, as in appeals in civil cases."

In accordance therewith, I am enclosing herewith a certified copy of my record in the case of State of Mississippi versus James Garrard Jones, with all the original papers in the case to be dealt with according to law.

With very best regards, I remain,

Very sincerely yours,

/s/ (Signature illegible)
Police Justice and Ex Officio
Justice of the Peace, City of Jackson,
Hinds County, Mississippi

JLS:ssw

IN THE POLICE COURT OF THE CITY OF JACKSON, MISSISSIPPI

(Filed Oct. 10, 1961)

Docket No. 19

Page No. 410

STATE OF MISSISSIPPI

vs.

JAMES GARRARD JONES

CERTIFICATE

I, James L. Spencer, Police Justice and Ex Officio Justice [fol. 110] of the Peace, in and for the municipality of Jackson, Hinds County, Mississippi, do hereby certify that the attached and within:

1. Affidavit
2. Order for Cash Appeal Bond
3. Copy of Judgement
4. ~~Notice from Sheriff~~

5.

6.

is a certified copy of my record in the case, with all the original papers in the case.

WITNESS MY SIGNATURE, this the 9th day of October, 1961.

/s/ (Signature illegible)
Police Justice and Ex Officio Justice of
the Peace, City of Jackson, Hinds County,
Mississippi.

(558-1)

GENERAL AFFIDAVIT

(Filed Oct. 10, 1961)

STATE OF MISSISSIPPI

COUNTY OF HINDS

This day personally appeared before me, the undersigned James L. Spencer, a Police Justice of the City of Jackson, and Ex-Officio Justice of the Peace of said City, J. L. Ray [fol. 111] who, being by me duly sworn, makes affidavit that James Garrard Jones on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there wilfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi.

/s/ J. L. Ray
AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME this the 15 day of Sept., 1961.

/s/ JAMES L. SPENCER
Police Justice and Ex-Officio
Justice of the Peace

[fol. 112]

Docket No. 19

Page No. 410

STATE OF MISSISSIPPI

vs.

JAMES GARRARD JONES

JUDGMENT
(Filed Oct. 10, 1961)

This cause this day coming on for trial and the defendant being arraigned in court on a charge of violation of Section 2087.5 of the Mississippi Code of 1942, and having pleaded not guilty and the court having heard testimony and being of the opinion that the defendant is guilty, it is therefore considered by the court and so ordered and adjudged that the defendant serve a jail term of 4 months and pay a fine of $200.00 and be committed to jail until paid.

ORDERED AND ADJUDGED, this the 15th day of September, 1961.

/s/ JAMES L. SPENCER
Police Justice and Ex Officio Justice of
the Peace, Hinds County, Mississippi

Disposition of Defendant: Mittimus to Sheriff

[fol. 113]

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON,

FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON

VS.

JAMES GARRARD JONES

ORDER FOR CASH APPEAL BOND

(Filed Oct. 10, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, James Garrard Jones by and through his attorney, for authority to post a Cash Appeal Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve as surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, James Garrard Jones, be and he is hereby authorized to post a Cash Appeal Bond of Five Hundred ($500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

Ordered and adjudged on this 28 day of September, 1961.

[fol. 114]

/s/ (Signature illegible)
Municipal Judge & Ex-Officio
Justice of the Peace

Approved and agreed to:

/s/ (Signature illegible)
City Prosecutor

/s/ Jack H. Young
Of Counsel for Defendant

***

Cash bond is accepted because James Garrard Jones is a non-resident of the State of Mississippi and knows no person within the State who has property and is willing to sign bond.

Appeal Bond

(Filed October 6, 1961)

#12,941

State of Mississippi)
County of Hinds)

Know all men, That we James Garrard Jones Principal, and .... and .... sureties are held unto the State of Mississippi in the penal sum of ($500.00) Five Hundred & No/100 Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our names this 29 day of September, A.D., 1961

The condition of the above obligation is that the above named James Garrard Jones on the 15th day of September A.D., 1961, before the Municipal Court of the City of Jackson in and for said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum

[fol. 115]

ORDERED AND ADJUDGED, this the 15th day of September, 1961.

/s/ JAMES L. SPENCER
Police Justice and Ex Officio Justice of the Peace, Hinds County, Mississippi

Disposition of Defendant: Mittimus to Sheriff

[fol. 113]

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON,
FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON
vs.
JAMES GARRARD JONES

ORDER FOR CASH APPEAL BOND
(Filed Oct. 10, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, James Garrard Jones by and through his attorney, for authority to post a Cash Appeal Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve as surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, James Garrard Jones, be and he is hereby authorized to post a Cash Appeal Bond of Five Hundred ($500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

ORDERED AND ADJUDGED on this 28 day of September, 1961.

[fol. 114] /s/ (Signature illegible)
Municipal Judge & Ex-Officio
Justice of the Peace

Approved and agreed to:

/s/ (Signature illegible)
City Prosecutor

/s/ JACK H. YOUNG
Of Counsel for Defendant

* * *

Cash bond is accepted because James Garrard Jones is a non-resident of the State of Mississippi and knows no person within the State who has property and is willing to sign bond.

APPEAL BOND

(Filed October 6, 1961)

#12,941

STATE OF MISSISSIPPI)
COUNTY OF HINDS)

KNOW ALL MEN, That we James Garrard Jones Principal, and .... and .... sureties are held unto the State of Mississippi in the penal sum of ($500.00) Five Hundred & No/100 Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our names this 29 day of September, A.D., 1961

The condition of the above obligation is that the above named James Garrard Jones on the 15th day of September A.D., 1961, before the Municipal Court of the City of Jack-[fol. 115]son in and for said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum of ($200.00) $200.00 and four months in jail dollars and all costs. And the said James Garrard Jones hath prayed an appeal of the said judgment to the next term of the County Court in and for said County and State.

Now, THEREFORE, If the said James Garrand Jones shall appear in person at the next term of the said County Court, and there remain from day to day and from term to term until discharged by law from the said charge, there then this obligation shall be void, otherwise it shall be in full force and effect and binding on all parties, joint and several, therein named.

Given under our hands, this 29 day of September 1961

/s/ JAMES GARRARD JONES Principal
1234 E. Madison Pk. Surety
Chgo. 15, Ill. Surety

The foregoing Bond was filed and approved this 29 day of Sept. 1961

J. R. GILFOY,
Sheriff & Tax Collector
Sheriff of Hinds County.

[fol. 116]

By /s/ FRED PICKETT
Deputy Sheriff.

Case Set
5/7/62
—9 A. M.

Honorable James L. Spencer
Municipal Judge
Jackson, Mississippi

Dear Sir:

Pursuant to Section 1204, Mississippi Code of 1942, as annotated, I, the undersigned, Sheriff of Hinds County, Mississippi hereby advise you that I have taken a cash appeal bond from the following named individual, after having duly approved the same; that I have further turned over the said bond to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi.

I hereby notify you as Municipal Judge of the City of Jackson, Mississippi, that an appeal has been taken with regard to said individual and I direct you to send up all papers regarding said individual to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi, as if the appeal bond had been filed with you, from whose judgment the appeal was taken.

Name	Date of Bond
James Garrard Jones	September 29, 1961

Thanking you for your compliance with this request, I remain,

[fol. 117]

Sincerely yours,
/s/ by: Fred Pickett, D. S.
J. R. Gilfoy, Sheriff
Hinds County, Mississippi

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 12941

STATE OF MISSISSIPPI

vs.

JAMES G. JONES

MOTION FOR LEAVE TO AMEND AFFIDAVIT
(Filed May 21, 1962)

Comes now the State of Mississippi, by Paul G. Alexander, the duly elected, qualified and acting County Attorney for Hinds County, Mississippi, and moves the Court to grant leave to amend the affidavit heretofore filed against the defendant in the above styled and numbered cause in the following manner:

1. By striking the word "disburse" where it appears in the affidavit and by substituting or interlining the word "disperse".
2. By striking the words: "with intent to provoke a breach of the peace, did then and there wilfully and unlawfully", where same appear in the affidavit, and by substituting or interlining therefor the words: "under such circumstances that a breach of the peace might be occasioned thereby, did then and there".

[fol. 118] 3. By adding the words: "wilfully and unlawfully" just prior to the words: "fail or refuse to disperse etc." where same appear in the affidavit.

4. Otherwise, said affidavit shall stand as Written.

Respectfully submitted,

/s/ PAUL G. ALEXANDER
Paul G. Alexander,
County Attorney

T

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 12941

STATE OF MISSISSIPPI

vs.

JAMES G. JONES

ORDER ALLOWING AMENDMENT OF AFFIDAVIT

This day this cause came on to be heard upon the motion of Paul G. Alexander, the duly elected, qualified and acting County Attorney for Hinds County, Mississippi, for leave to amend the affidavit heretofore filed against the defendant in the above styled and numbered cause in the following manner:

1. By striking the word "disburse" where it appears in the affidavit and by substituting the word "disperse".
2. By striking the words: "with intent to provoke a breach of the peace, did then and there wilfully and [fol. 119] unlawfully" where same appear in the affidavit, and by substituting or interlining therefor the words: "under such circumstances that a breach of the peace might be occasioned thereby, did then and there".
3. By adding the words: "wilfully and unlawfully" just prior to the words: "fail or refuse to disperse etc." where same appear in the affidavit.
4. Otherwise, said affidavit shall stand as written.

And it appearing unto the Court that the motion is well taken:

It is, therefore, ordered and adjudged that the movant be, and he hereby is, authorized and allowed to amend said affidavit to the extent and in the manner hereinabove set out.

Ordered and adjudged this 21 day of May, 1962.

/s/ Russell D. Moore
County Judge

In the County Court of the First Judicial District of Hinds County, Mississippi

No. 12941

State of Mississippi

vs.

James G. Jones

Order

This cause coming on to be heard in the County Court of the First Judicial District of Hinds County, Mississippi, [fol. 120] on the original affidavit of the City of Jackson, Mississippi. This cause being brought to this Court upon an appeal and the City of Jackson, Mississippi, being present by its prosecutor. The defendant being present in person and by attorney and entering a plead of not guilty.

The regular jury for the week composed of G. J. Reese and eleven other men, having been duly empaneled and sworn to try the cause. The City of Jackson, Mississippi, offered all of its evidence and rested. The defendant made a motion after for directed verdict of not guilty. The Court considered said motion after arguments of the cause and is of the opinion that the said motion should and is hereby sustained.

It is therefore, Ordered and Asjudged the defendant is here found not guilty of the charge herein made against him and that he is now hereby finally and forever discharged. That the cash bond of $500.00, heretofore deposited with the sheriff of this County be refunded to the defendant.

Ordered, this, the 22nd day of May, 1962.

/s/ Russel D. Moore
Judge

State of Mississippi
County of Hinds

I, H. T. Ashford, Jr., Clerk of the Circuit and County [fol. 121] Courts, and custodian of the said records in and for the said State and County, hereby certify that the foregoing 10 pages contain a true and correct copy of all the pleas and proceedings had and done in the case of State of Mississippi vs. James Gerrard Jones in the County Court of the First Judicial District of said County in said State, and being case No. 12941.

Given under my hand and the seal of the County Court of said County and State this the 8 day of May, 1963.

H. T. Ashford, Jr.
Circuit and County Courts,
Hinds County, Mississippi

/s/ Robert E. Lilley D. C.

(Seal)

Mr. Rachlin: I wonder if I may request permission of the Court to have the jury look at this document?

The Court: Yes.

Mr. Rachlin: Whom shall I submit it to first?

The Court: You can read the material, parts of it, if you want to, because if you showed it to each one of them to read, it would consume a large amount of time. I suggest you read what parts you want to read.

Mr. Rachlin: I will at this moment merely read the Order [fol. 122] of Judge Russell Moore.

The Court: It will go to the jury room with them anyhow.

Mr. Rachlin: I am going to read two parts of the document just submitted in evidence. First is the document entitled "General Affidavit", which appears to bear the signature of Chief J. L. Ray. It is sworn to and subscribed the 15th day of September, 1961.

(Same was read aloud by Mr. Rachlin)

I will now read a document headed "In the County Court of the First Judicial District of Hinds County, Mississippi, Number 12941. State of Mississippi versus James G. Jones. Order."

(Same was read aloud by Mr. Rachlin)

(Mr. Rachlin continues:)

Q. Father Jones, did you return to Jackson, Mississippi, for your arraignment in the County Court of Judge Moore?

A. Yes, I flew in from Chicago here for that purpose.

Q. Can you tell us what your expenses were for the trip back and forth, including necessary expenses in the City of Jackson?

A. $160.00 to $175.00.

Q. Did you come back for the trial itself?

[fol. 123] A. Yes, I did.

Q. Were your expenses a similar amount at that time?

A. Slightly more in that the time was a little longer.

Q. After you were convicted in Judge Spencer's court and after you returned to your place of employment at St. Lennox House in Chicago, did you receive any criticism made to you as a result of what happened?

A. Yes.

Q. What was the nature of this?

Mr. Watkins: I object to this unless he discloses the source of the criticism. I don't know whether he is talking about these defendants.

Mr. Rachlin: I'll accept the suggestion by Mr. Watkins.

The Court: Well, I don't think any hearsay evidence would be admissible. Anything that either one of these defendants said would be competent.

Mr. Rachlin: I think I am permitted to show, not being in violation of hearsay, that he was the subject of probing. It isn't a question of whether the statements were true, but whether he in fact received them. Therefore, I think it is an exception to the normal hearsay rule.

[fol. 124] Mr. Watkins: If these were statements alleged to have been made by other persons not/produced here for cross examination, I think it would fall within the hearsay rule.

The Court: Yes, I think that would be hearsay. Anything that these defendants said, of course, is competent. Of course, as to whether it would be a matter that might subject one to criticism, of course, that is a matter for the jury to determine as to whether it would or not; but if it was someone who could come here and be subjected to cross examination, that would be competent. But what he heard was hearsay, and I sustain the objection.

Q. Is a part of your work at St. Lennox a duty to raise money for St. Lennox?

A. Yes. I'm in charge of raising approximately $116,000.00 a year to run this work.

Q. As a result of your arrest and conviction and stay in jail, did you have any experience personally, any difficulty, in raising money?

Mr. Watkins: We object to that. That is a matter of the institution that has no concern here.

[fol. 125] The Court: Yes, sustain the objection.

Mr. Rachlin: It is a question of his job, whether he could perform his job.

The Court: Sustain the objection. If he has not raised that amount of money, it is competent for him to testify he has not raised as much money as he formerly did, but what it is attributable to would be another question; so I sustain the objection to the extent that he cannot testify he was not able to raise as much money because of the arrest.

Q. After the arrest and your return to St. Lennox, were you able to raise as much money as you had formerly?

Mr. Watkins: We object to that as being immaterial to any issue in this lawsuit.

The Court: Overrule the objection.

A. I may answer that?

Q. Yes. The Judge has permitted you to answer the question.

A. I was not able to raise as much money as I had from certain people. May I elaborate?

Q. No. The Judge has ruled you cannot say what these people have told you.

The Court: That is right. He cannot, because that would [fol. 126] be hearsay. And there would be many reasons why he couldn't raise as much money, so far as the Court knows or so far as the evidence shows. Now, it is for the jury to determine whether it was as a result of the arrest or whether it was the result of his activities. So that is a matter that is purely speculative to a certain extent.

Q. Do not answer what these people said. Do you know of your own knowledge what your reputation has suffered as a result of the arrest and confinement to the county jail?

Mr. Watkins: We object to that. It is a conclusion on the part of this witness as to whether his reputation has suffered.

The Court: If he knows of his own knowledge, I will let him answer. Overrule the objection.

Q. Father Jones?

A. I know of my own knowledge that in the minds of certain people my reputation has suffered.

Mr. Watkins: That is bound to be hearsay, "in the minds of certain people."

Q. Was this made directly to you? Derogatory state- [fol. 127] ments made directly to you?

The Court: Sustain the objection. Let those people come in and testify themselves.

Mr. Rachlin: May I take the liberty of pressing the point I made a moment ago? The issue as I see it is not the issue of hearsay; it isn't the issue of what these people said—whether it was true or not. He is not testifying whether they said something true or not. He is testifying something was said. He is describing something he observed with the senses. It isn't a case where he said these people have said something true; it is that it was said.

The Court: Sustain the ruling. You would have to bring the witnesses here and let them subject themselves to cross examination. Sustain the objection.

Q. Except for these monetary damages which you have described, did you sustain any other loss of money or income?

A. No.

Mr. Rachlin: All right, Mr. Watkins.

The Court: Take a ten minute recess at this time.

(Ten minute recess)

[fol. 128] Cross examination.

By Mr. Watkins:

Q. Reverend Jones, I do not see the plaintiff Reverend Pierson in the courtroom today. Do you know where he is?

Mr. Rachlin: I know where Reverend Pierson is. He will be here.

Mr. Watkins: I didn't ask you the question, Mr. Rachlin.

Q. Do you know where Reverend Pierson is?

A. No, sir.

Q. Do you know whether he intends to be back in this courtroom for the trial of this case?

A. No, sir.

Mr. Watkins: We would like to put the plaintiffs and their attorneys on record that we desire to call Reverend Pierson as an adverse witness unless he takes the stand on direct, and would like to have his presence in court.

Mr. Rachlin: I tried to offer Mr. Watkins the courtesy of telling him exactly what was going to happen. He will be a little late but he will be here, I anticipate, within an hour. That is what I wanted to say. It would have solved [fol. 129] the problem.

The Court: Very well. It is on the record now, and that ends it.

Q. Reverend Jones, you are familiar with Exhibit A to Reverend Pierson's deposition, which was a pamphlet which purported to state the purposes of your trip throughout the South, and I hand you that exhibit and ask you if that is not the pamphlet which you had with you and which states the purposes of your trip South.

Mr. Rachlin: I am going to object at the moment because I think there are at least three questions involved in that one phrasing, and I would like, perhaps, Mr. Watkins to separate the questions out.

The Court: His question was whether or not that document states the purposes of the trip. I will let him answer that question.

Mr. Rachlin: Just that question?

The Court: Yes, sir.

Mr. Rachlin: May I ask Your Honor to instruct the witness to answer the question yes or no?

The Court: Yes. You may answer that yes or no, and then hand me the document, Mr. Watkins.

[fol. 130] (Counsel hands to witness)

A. Yes.

The Court: Let me see the document.

Mr. Rachlin: It hasn't been offered.

The Court: No. I can foresee there are going to be objections.

Mr. Rachlin: I have no objection as to offering it.

The Court: I want to see it anyhow.

Mr. Rachlin: Oh, I'm sorry. When I said I had no objection, I didn't mean I had no objection to the admission of it. I will state my objection at a later moment. (Same handed to the Court)

Offer in Evidence

Mr. Watkins: We offer as Defendant's Exhibit 1 the pamphlet identified by the witness, which purports to state the reasons for their trip South.

Mr. Rachlin: Your Honor, may I be heard?

The Court: You may state your objection. I don't care for any argument.

Mr. Rachlin: We object to the admission of this document, not because we disagree with what it says, but it is improper cross examination; nothing in the direct examination in any way raises any of the questions that come there. Secondly, it is irrelevant and immaterial. The issue [fol. 131] is not their purposes for whether they were in a certain place lawfully or not lawfully, and not where they were coming from and going to and what their purposes were. We don't have to state our purposes in our travels throughout the United States.

The Court: The objection is overruled. I think, Gentlemen, that the background of this lawsuit is such that a wide latitude will be allowed both sides for the introduction of their testimony; and that document, I think, is competent, and for that reason I will overrule the objection.

Let it be marked and received in evidence.

Mr. Rachlin: May I take exception?

The Court: Yes. I might say, Mr. Rachlin, it is not necessary. You have an exception under the Rules, and also, the fact that it is not brought out on direct examination is utterly immaterial because one can cross examine about anything. So you can have an exception, though, and you can so state it on the record each time, but it is not necessary.

Mr. Rachlin: What I was excepting to was not your overruling the objection, but the comments that Your Honor made.

[fol. 132] The Court: Very well.

(Same received in evidence and marked as Defendants' Exhibit No. 1, which exhibit follows here below:)

DEFENDANTS' EXHIBIT NO. 1

WITNESS JONES

May 14, 1963

Marked for identification to Rev. Peirson's
deposition 2/15/63 MB

Message to the Episcopal Church's 60th General Convention, Detroit, Michigan, September 17-29, From the Clergy on the Prayer Pilgrimage Between New Orleans and Detroit, September 12-17:

As priests of the Church, we have prepared this statement to interpret the message we bear to the General Convention by our journey from New Orleans. While we speak only for ourselves, we represent the concern of many more Churchmen: those who have given of their substance to make the journey possible and of their prayers to sustain us, and all others concerned that the Church be more truly itself.

Our message to the Church is that the Church must become, in every phase of its life, that which by the grace of God it is—one Holy Fellowship where racial barriers have been done away.

We recognize and share in the Church's appalling failure to express this in its life. We are justifiably chided by the irreligious for the emptiness of our pronouncements. We are also aware that individual circumstances determine the immediate and direct steps to be taken by Christians in a [fol. 133] particular place, but nothing can be allowed to blurr for us what the perfect Will of God is. We seek by our journey to express our common repentence and witness to His Will.

Since the Church is one, even as the nation is one, we rejoice that our number includes clergy from one ocean to the other and from the Great Lakes to the Gulf. As members one of another in Jesus Christ, we recognize our responsibility for the health of His Church wherever the Gospel is planted; and as citizens of one country we reject sectionalism that would limit the active expression of love for oppressed brothers anywhere. At neither our starting point in the South or our destination in the North, nor in the larger areas they represent, have we any reason for complacency over the quality of Church life in which we all are involved, or its effect in the general community.

At the beginning of our journey we shall see *segregation* in the Body of Christ as found in some of the educational facilities we are to visit. We believe it to be a tragedy that Church schools and colleges ever should have been closed to some, and a tragedy of immense proportions that they have lagged behind the state in the removal of racial restrictions.

At the end of the pilgrimage we shall consider the more subtle and difficult question of *separation*, both within the Church and the community. At a suburb of Detroit we will confer with local clergy on the role of the churches in over- [fol. 134] coming discriminatory housing practices. Men are forced to live in separate areas and they go to separate churches. Our "separate-but-equal" parish system, as it exists in the North as well as the South, is partly a result of the housing pattern, but also a contributor to it. Clerical appointments reflect the fact that we have made [illegible] an adjunct to racial separation in the community.

Whether with the dying forms of *segregation* or the elusive, but equally fragmenting devices for the *separation* of Christ's Body and the community, Churchmen everywhere have work to do. We are making our journey so that the Church might focus on the needs, and gain renewed understanding of its task. In places where our coming may be regretted by some, we will seek opportunities to confer with the clergy so that greater understanding may be had by all. We sincerely hope to conclude our pilgrimage without interruption, but we cannot enjoy the luxury of being exempted from consequences born out of our conviction that the Church is one and that we, as Christians, cannot be divided according to the ways of the world. It is in His Name that we go forth, and to Him we offer our selves, our souls and bodies. In these days of world crisis, with darkening signs on all sides, may His Church, at least, be found faithful. Amen.

•••

[fol. 135] (Mr. Watkins continues:)

Q. Reverend Jones, this pamphlet you have just identified, which is Defendants' Exhibit Number 1, deplores segregation in your churches, schools and churches in the South, does it not?

Mr. Rachlin: Objection.

The Court: Yes, sustain the objection to that. The document speaks for itself. You may read it to the jury, if you desire.

Q. I want to ask the witness this question: How many of your churches, schools, did you visit in Mississippi on your trip?

Mr. Rachlin: Objection, Your Honor. It is irrelevant.

The Court: Overrule the objection.

A. Repeat it, please.

Q. How many Episcopal schools in Mississippi did you visit on your trip?

A. One school.

Q. Please name the school.

A. All Saints College, Vicksburg, Mississippi.

Q. I will ask you if it is not a fact that at the time of your visit the head of that school was Bishop Allen, who is [fol. 136] now Bishop of the Episcopal Church of Mississippi?

Mr. Rachlin: Your Honor, I object to the question as being quite irrelevant to these proceedings.

The Court: Overrule the objection.

Q. Was Bishop Allen not in charge of that school?

A. That isn't the first thing you asked me, exactly. Would you read back?

The Court: (To reporter) Read him the question.

(Question was read by court reporter)

A. He was not Bishop Allen. He was the Reverend Mr. Allen, in that he was not a bishop. And he is not the Bishop of the Diocese of Mississippi; he is a co-adjutor bishop.

Q. What is a co-adjutor bishop?

A. It's an assistant type.

Q. You visited him at All Saints College on September 12th, the day before you were arrested in Jackson on September 13th, didn't you?

A. I visited All Saints College, and he was there, yes.

Q. I want to ask you if on that occasion in your presence he didn't urge your group not to come to Jackson, Mississippi.

Mr. Rachlin: Your Honor, I object to that question as [fol. 137] being irrlevant and immaterial and prejudicial. It has not bearing on this lawsuit.

The Court: I will overrule the objection, and, if at the conclusion of all the evidence in the case I will instruct the jury then as to the effect of it. The testimony thus far shows, of course, that he was an interstate passenger and as such, of course, had the right to travel as an interstate passenger. But, as I understand the law, it is that while people have certain rights, yet there are limitations on practically every right or every freedom that is given to the people under the Constitution of the United States; and if they abuse that privilege, then the officers, in order to prevent a riot, in order to prevent bloodshed, or in order to prevent any difficulty that they can reasonably foresee, they have a right under the law to direct that people shall move on. And that is going to be one of the issues in this case. Of course, until all of the evidence is in, I can't give the full instructions, and am not instructing the jury at this time, but am stating for the record my reason for permitting a question to be asked and required to be answered which may have no effect and may be entirely irrelevant. If it is irrelevant, then it would have the effect of not being admissible and not influencing the jury in [fol. 138] any way. So, until all of this testimony is in the record for this jury, the Court cannot and will not undertake to lay down a definite rule of what the law is. But certainly the law is that while people have the right to move freely in interstate commerce as long as they are not interfering with the rights of other people, every right of freedom has some limitation. Certainly you are all familiar with Oliver Wendell Holmes' famous statement on freedom of speech. Certainly, under the Constitution, freedom of speech is admissible and is guaranteed by the Constitution of the United States, but as Mr. Justice Holmes said, it does not give a person the right to run into a crowded theater and holler "Fire, Fire, Fire" when there is no fire. There is a limitation on freedom of speech. There is a limitation on practically every freedom that we have. That is the question that is going to come out in this case as to whether or not these officers violated the law and unlawfully committed a wrong on these people, these plaintiffs. Then when all this evidence is in and the argument of counsel to the jury is made, I will instruct the jury fully as to what—and definitely—as to what the law and rights of each party is. So for that reason, I overrule the [fol. 139] objection.

Mr. Rachlin: Your Honor, with all due respect to Your Honor, may I ask that Your Honor's remarks be striken from the record as beyond the scope of Your Honor's authority.

The Court: Yes, sir.

Mr. Rachlin: Thank you, Your Honor.

The Court: You are very welcome, and the objection will be overruled.

(Mr. Watkins continues:)

Q. My question, Reverend Jones, was: Did not Bishop Co-Adjutor Allen on your visit the day before you were arrested, at All Saints in Vicksburg, urge your group not to come to Jackson, Mississippi?

A. Apparently, the Bishop Co-Adjutor is not too familiar with bus travel. I would presume he drives an automobile more, because after urging us not to come to Mississippi had no answer—not to come to Jackson—had no answer as to how we could get to Chattanooga by bus without going through Jackson.

Q. Weren't you in a chartered bus?

A. Yes, sir.

Q. Then I interpret your answer to that question to me [fol. 140] to be that Bishop Allen did urge your group not to come to Jackson, Mississippi. Is that correct?

A. With the specifications that I added, yes. This was not the only thing he did, you know. We had a long, long talk.

Q. In spite of his urging or his advice to your group that day, you did come to Jackson, didn't you?

A. The bus was—

Mr. Rachlin: —Your Honor, I object to that question. This becomes an argument at this point.

The Court: Overrule the objection.

Q. You did come to Jackson, didn't you?

A. The bus was chartered to Jackson; we came to Jackson, where we were then to transfer to public transportation to go to Chattanooga and then to Detroit. We came to Jackson.

Q. On your trip to Jackson, did you call on Bishop Gray, the head of the Episcopal Church in Mississippi?

A. No, sir. Bishop Gray was in the hospital, as I recall.

Q. Did you call on any Episcopal minister in the City of Jackson during your trip?

A. Episcopal ministers called on me in your jail.

Q. I didn't ask that question, and maybe I had better limit it. Before you were arrested and before you were in [fol. 141] the act of attempting to leave Jackson, did you call on any Episcopal minister in the City of Jackson?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule the objection.

A. We got into Jackson late at night and came to catch a bus the next morning. It would have been too late to call on any ministers that night, and the next morning we had a scheduled bus to catch. And that is the answer, that we did not call on any ministers previous to arrest.

Q. Reverend Jones, in Exhibit 1, the pamphlet explaining the purposes of your trip, there is a sentence which reads, "In places where our coming may be regretted by some, we will seek opportunities to confer with the clergy so that greater understanding may be had by all." Why did you anticipate that your presence would be regretted by some?

A. There are sinfully in the Episcopal Church some clergymen who deny the rulings of their church and of Jesus Christ and believe in segregation, and I would presume that in their state of sin they would regret my coming.

Q. But as the statement indicates, you didn't call on any of those members of your clergy in Jackson, did you?

A. Very difficult from jail, sir. I made remedy and attempted by pleading innocent. If I had been found innocent [fol. 142] in Mr. Spencer's court, I would have had the opportunity to call.

Q. I thought that you said that if you hadn't been arrested on the 13th you would have been on your way to Chattanooga?

A. Exactly.

Q. Would you have called on any minister in Jackson?

A. Oh, no. This was not on our itinerary. We had called on other ministers. In McComb, for instance.

Q. You knew before your trip of the violence that had resulted from groups of people who called themselves Freedom Riders which went into Alabama, did you not?

Mr. Rachlin: Your Honor, I object to that question as being inflammatory, serving no purpose here whatsoever, and meant just to incite and inflame the jury, and I move it be stricken.

The Court: Overrule.

Q. Do you know the question?

A. Would you repeat it, please, Mr. Watkins.

Q. You knew before your trip to Jackson of the violence that resulted from the groups that called themselves Freedom Riders and went into Alabama, did you not?

A. I heard the mayor say last night there was no violence.

[fol. 143] Q. I want to ask you, Reverend Jones, if I didn't ask you that same question on your deposition taken on February 15, 1963, here in the City of Jackson, and if your answer was not "I had read of such in the papers"?

A. That's what you asked me, and that's what I answered.

Q. Sir?

A. That is what you asked me in my deposition, and that is what I answered.

Q. Is it the truth?

A. I had read of such in the papers.

Q. You knew that hundreds of people who called themselves Freedom Riders had already visited Jackson, didn't you?

A. I had read of such in the papers.

Q. Did you endorse and approve the purposes and activities of those groups which called themselves Freedom Riders?

Mr. Rachlin: Your Honor, I object. What has that got to do with this case? This is purely—

The Court: I overrule the objection. I think it is material and competent. If it will help you any, I will give you a standing objection to questions of this type, and it will be overruled and you won't waive your objection by failure to renew. I think all of that is competent in the trial of this lawsuit, and I am going to let it in. You may have a stand- [fol. 144] ing objection if you desire or you may raise objection to each question.

Mr. Rachlin: Your Honor, I think I will continue my right to object at particluar questions.

The Court: Very well.

Mr. Rachlin: But—

The Court: —And I overrule that objection.

Mr. Rachlin: But I do think Your Honor is—I withdraw.

The Court: I understand, Mr. Rachlin. I know your objection, and you think I'm wrong, but I think I'm right.

Mr. Rachlin: If you will permit me the liberty, it's not merely that you overrule my objection, but it's the comments you make in or over my objection which themselves, I think, are incompetent, if you will forgive me.

The Court: I will forgive you, and I will adhere to what I have stated in the record and allow you exception to that. And what I was trying to do was to give you a standing objection to testimony of this type and character, because I think it is competent in the case. If it is not competent, then, of course, at the conclusion of all the testimony, I would certainly exclude it and instruct the jury to disregard it. And I'm familiar with that principle of law. It's difficult [fol. 145] to eradicate testimony once it has gone in. So now, so that we don't have to argue with each other, if you will make your objection, I will rule without comment, provided you don't—and I'll let you state your grounds in the record —but I don't care to hear an argument unless I call for it.

Mr. Rachlin: Thank you, Your Honor.

Q. Do you remember the question, Reverend Jones?

A. I'm sorry, sir. You're going to have to re-read it to me.

Q. Having already told me that you knew of the visits into Alabama and of hundreds into Jackson before you made your trip, my question was: Did you endorse and approve the purposes and activities of those groups which called themselves Freedom Riders?

A. Publicly I did not approve or endorse those groups who called themselves Freedom Riders; however, privately, in my own conscience and in my prayers, I approved of some of those people who called themselves Freedom Riders. I have no idea as to the truth of the reports that I read in the papers, but I did read that the character of some were questionable, such as charges of prostitution and communism, and I could not even in the privacy of my conscience and prayers privately approve of those kind of [fol. 146] people doing anything except changing their ways.

Q. You have told us you disapproved of the character of some of the Freedom Riders, but do I understand that you thoroughly approved of the purpose and activities of the Freedom Riders?

A. I repeat, sir. Publicly I did never endorse or approve of the activities of some of the alleged Freedom Riders. Privately in my conscience and in my prayers I did approve of some whose characters were the kind of people that I could approve of.

Q. And you felt so strongly on that subject, did you not, Reverend Jones, that you thought the Freedom Rider activities of others in your group should be carried out even if violence resulted, didn't you?

Mr. Rachlin: Object to the question. There is no such inference.

The Court: Overrule the objection.

Q. Do you want me to re-read the question?

A. No, I heard you very well, sir. I also remember that I told you in the deposition when—and I would like to tell you now—and that is that I resent my prayer pilgrimage activities being put in the same sentence with "other Free- [fol. 147] dom Riders." I am not a Freedom Rider, I have never been a Freedom Rider, and I ask you again now, as I asked you before: Please, sir, do not leave those begging questions to me because it is not true.

Q. I want to ask you, Reverend, if your answer to that specific question in the deposition was not, and I quote: "I would have to look at the particular situation and weigh the evils."

Question, "You did that, didn't you?"
Answer, "I did."

I will ask you if those weren't the answers to the questions about how you felt about the Freedom Riders in your group? And I'll do better than that; I'll show you Page 17 of your deposition with the questions and answers on it.

(Hands to witness)

Mr. Rachlin: May I request through you that Mr. Jones have the liberty of reading the very next page that Mr. Watkins is referring to?

The Court: Yes. You may read the next page also.

Q. If you are going to read anything, I would like for you to pick up with the questions I asked you; read that question, your answers and the following questions.

[fol. 148] The Court: Yes, I will let him answer that question first that Mr. Watkins propounded, and then if he wants to read the following page, he may do so.

Mr. Rachlin: Thank you.

A. You want me to read that aloud?

The Court: The question is, did you—were those questions propounded and were those your answers?

A. (Reading) "Question: And you felt so strongly on that subject that you thought the Freedom Rider activities of others and your group should be carried out even if violence resulted, didn't you?"

"Answer: I repeat, I would have to look at the particular situation and weigh the evils.

"Question: You did that, didn't you?

"Answer: I did.

"Question: You felt strongly enough about it that you thought the activity of the Freedom Riders and your group should be carried out even if violence did occur, didn't you?

"Answer: I never suggested and I would really appreciate it if you would stop trying to equate our prayer pilgrimage with a Freedom Ride. I resent this 'you and other Freedom Riders,' 'Stop beating your wife' questions that [fol. 149] you continually come forth with. I resent them very much, sir. I am not a Freedom Rider. I participated in a religious prayer pilgrimage, and I know nothing about 'other Freedom Riders.' I have no connection with Freedom Riders."

Q. At the time you made that statement, Reverend Jones, were you familiar with the Redbook article telling about your trip South, entitled "Rebel in the Rockefeller Family"?

Mr. Rachlin: Objection. Are we trying on the magazines too? Is that the idea?

By the Court: Overrule the objection.

Q. Were you familiar with that story of your trip south?

A. My familiarity was that I had heard that there was an article. I had never read it, and I have not since.

Q. You did know that there was published in the year 1962 a lengthy article by Redbook Magazine with details and quotes and the purposes of your trip South? You knew of the existence of the article, didn't you?

A. Which question are you asking? The details or—

Mr. Rachlin: Reverend Jones, please. Your Honor, there are so many objections to that question that I don't know where to start. First, it's argumentative. The witness has [fol. 150] already answered the question that he never read the article then or since. Secondly, it's irrelevant. Thirdly, it is argumentative; and, fourthly, I think it is inflammatory and should be restricted, despite all the previous rulings Your Honor has made.

The Court: Yes, I sustain the objection to that.

Mr. Watkins: Your Honor, he said that he had not read it. I would like to show that he knew of its existence and has deliberately not read it.

Mr. Rachlin: What of it? What kind of nonsense is this?

The Court: That would be immaterial. I sustain the objection.

Q. Who represented you as attorneys in your trial in the Municipal Court—

Mr. Rachlin: Objection, Your Honor, as irrelevant. It's unimportant who represented them.

The Court: Overrule the objection.

Q. Surely, that is not a hard question, Reverend Jones.

A. I'm sorry. I have drawn a blank. Just a minute. Just give me a minute to think. His last name is Young, and I [fol. 151] can't remember his first name.

Q. Jack Young?

A. His name was Jack Young, and he was assisted by an attorney named Carl Rachlin.

Q. That's the gentleman standing right here by me?

A. Yes, Mr. Watkins?

Q. Is it this Mr. Rachlin?

A. Yes, sir.

Q. And you knew at that time and you know now that this gentleman, Mr. Rachlin, is general counsel for CORE?

Mr. Rachlin: That is irrelevant. I would no more ask that question than ask Mr. Watkins what murderers he has defended. Since when are we trying the lawyers in this case?

The Court: Overrule the objection.

Q. My question was—Do you remember the question?

A. Yes.

Q. You knew at that time and now know he is general counsel for CORE, don't you?

A. I did not know he was general counsel for CORE then, and I do know it now.

Q. Who furnished his services to you in Municipal Court?

A. I have no idea.

[fol. 152] Q. You didn't, did you?

A. No, sir.

Q. Did you request a jury trial in the Police Court?

Mr. Rachlin: Objection, Your Honor. What consequence is that?

The Court: Overrule the objection.

A. No, nor was it offered.

Q. Did either of your attorneys request a jury trial in the Municipal Court?

A. No, nor was it offered.

Q. Your church, Reverend Jones, practices separate but equal facilities for the two races both in the North and in the South, doesn't it?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule the objection.

A. Sinfully and contrary to all regular authority imposed in our church, the answer to that question is yes.

Q. Have you ever taken a segregated church in the North or the South, or a segregated school of your church in the North or the South, and tried to bring an equal number of the other race in and thereby physically integrate it?

[fol. 153] Mr. Rachlin: Your Honor, I object to the question. I think we are not trying schools; we are trying a case in a bus station.

The Court: Overrule the objection.

A. No, sir.

Q. In your pamphlet explaining the purposes of your trip to Jackson, Mississippi and South, you complain of separate housing facilities for white and colored people, don't you?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

Q. Do you remember the question, Reverend?

A. I would appreciate your repeating it, sir.

Q. You complain of separate housing conditions for white and colored people, don't you?

Mr. Rachlin: I have stated my objection to that question, Your Honor, as being irrelevant and incompetent.

The Court: I overrule the objection.

Q. What is your answer?

A. Yes, sir.

Q. And that situation exists in your home state and [fol. 154] community, doesn't it?

Mr. Rachlin: Same objection, Your Honor. Same reasons.

The Court: Overrule the objection.

A. It does not exist in my own community that I live in as a part of Chicago, but it does exist in some parts of Chicago and some parts of my home state, Illinois.

Q. And those conditions were existing in Illinois and in some parts of Chicago when you came on this pilgrimage, weren't they?

Mr. Rachlin: Same objection and same reason.

The Court: Overrule the objection.

A. Yes, sir.

Q. Don't you think, Reverend Jones, that your activities could have been better spent by trying to correct what you considered improper discriminatory practices in Illinois, rather than coming to Jackson, Mississippi?

Mr. Rachlin: Your Honor—

The Court: Sustain the objection to that question.

Mr. Rachlin: May I be heard on this question?

The Court: I sustained the objection.

[fol. 155] Mr. Rachlin: Oh, I'm sorry. You'll forgive my shock, Your Honor.

The Court: Very well, proceed.

Q. Reverend Jones, I want to refer you to what has been offered in the deposition as Exhibit B to Reverend Pierson's deposition, which are a list of demands reported by The Daily Worker of May 26, 1928, nine in number, of the Communist Party, and I want to ask you whether or not you are in agreement with any or all of those demands.

Mr. Rachlin: Your Honor, I must strenuously object to this question. It has no purpose in this hearing. Father Jones has already stated his position with regard to Communism. This question can have no useful purpose. It is deliberately done to excite a jury in a case like this, and I seriously object to the question. And I ask that you give special instruction to the jury that it be stricken from their minds and, if necessary, I will move for a mistrial for the question being asked.

Mr. Watkins: I would like for the Court to read the nine demands.

(Hands to Court)

[fol. 156] (Court reads same)

The Court: What was the question?

Mr. Watkins: Did he agree with any or all of those nine demands contained.

The Court: Overrule the objection.

Mr. Rachlin: I move for a mistrial on the grounds that the document is truly inflammatory and serves no purpose, and that Your Honor's ruling helps contribute to the inflammatory nature of this trial. This is purely a question where the defendants are charged with false imprisonment, not whether the Communist Party in 1920 said something or other, as Father Jones has already indicated his position in regard to Communism.

The Court: I overrule the objection without comment.

Mr. Rachlin: What about my motion for mistrial?

The Court: Overrule the motion for mistrial.

Q. Father Jones, I hand you quotation from The Daily Worker of May 26, 1928, which purports to set out nine demands of the Communist Party. I will ask you if there are any of those demands with which you agree or any with which you disagree.

A. You want to re-explain to me what The Daily Worker is?

[fol. 157] Mr. Rachlin: Your Honor, let the record show that, pursuant to my promise, the plaintiff Father Pierson has entered the courtroom within the time I suggested that he would, and he is presently here and available.

The Court: Very well.

Q. The Daily Worker, I think you know and I know, is a paper published.

A. Well, now, I have never seen a copy of The Daily Worker, sir. Have you? I mean, I don't know.

Mr. Watkins: I submit that has nothing to do with the question. I have submitted—

The Court: The question is, Father, whether or not you agree with those statements there / in that document.

The Witness: May I ask you something, Your Honor?

The Court: You may read the document and then answer whether you agree with those statements in it. You can ask me anything.

The Witness: May I?

The Court: Yes.

The Witness: I don't know what The Daily Worker is. I have never seen such a copy, and I have no assurance this is even something from this newspaper, whatever [fol. 158] he is talking about.

The Court: Well, you can answer the question, Father, whether you agree with the statements or don't agree.

The Witness: In other words, I am forced to read this piece of paper which purports to be something from some kind of an organization from some newspaper I don't know anything about, and I have to tell you whether or not I agree with these principles?

The Court: Yes, sir, just like he asked you a question.

Q. Reverend Jones, before you read that, you saw that in my office when your deposition was taken on February 15th.

A. I beg to disagree with you, sir. You did not present this to me.

Q. Weren't you in the room and see and hear the other witnesses?

A. Sitting as far from here as the jury is, and—

Mr. Rachlin: —Your Honor, what kind of colloquy is this between a witness and an attorney?

The Court: Sustain the objection as to whether he saw it when Father Pierson's deposition was being taken, but I will give him an opportunity to read it. If he hasn't seen it, as he said, then I will direct that he answer the question [fol. 159] whether he agrees or disagrees. So you may read it, Father.

Mr. Rachlin: I want to note another objection, which Father Jones himself indicated, that we have no guarantee of the authenticity of this document, and we are being asked a question about a document which we have no assurance that it exists.

The Court: Let the objection be noted. The objection is overruled.

A. May I read it aloud?

The Court: You may if you want to; you are not required to, because the question propounded to you is whether or not you agree or disagree.

A. The Daily Worker, May 26, 1928, Page 6. I was one year old.

Q. I didn't ask you that.

A. (Reading) "Abolition of the whole system of race discrimination and full racial equality."

I and my church, the Episcopal Church of the United States of America, agree with that as so stated.

Q. Go right ahead.

A. "Abolition of all laws which result in segregation of Negroes; Abolition of all Jim Crow laws. The law should [fol. 160] forbid all discrimination against Negroes in selling or renting houses."

The Episcopal Church and I as a priest of that church agree with that statement.

Q. Go right ahead.

A. "Abolition of all laws which disenfranchise the Negroes on grounds of color."

The Episcopal Church and I as a priest of that church agree with that statement.

"Abolition of laws forbidding intermarriage of persons of different races."

The Episcopal Church has not spoken on this issue, and I have not made up my mind as to how I would feel on that issue.

Q. You have no opinion on it?

A. I have no opinion.

Q. Go right ahead.

A. "Abolition of all laws and public administration measures which prohibit or in practice prevent Negro children or youth from attending general public schools or universities."

The Episcopal Church, apparently our country, and I as a citizen and a priest of the church agree with that state- [fol. 161] ment.

"Full and equal admittance of Negroes to all railway station waiting rooms, restaurants, hotels, theaters."

Apparently our country and my church, and as a citizen and priest of both, I would agree with that statement.

"The War and Navy Department of the United States Government . . ."

—Are these departments still in existence as such?

Q. I think we still have a War Department and a Navy Department.

A. " . . . of the United States Government should abolish all Jim Crow distinctions in the Army and Navy."

That's been done, sir. I guess I would have to agree with that. It's already done, by President Truman in 1948. I don't know whether he read this document, but he was the president of our country, and he did that.

Number 8, "Immediate removal of all restrictions in all trade unions against the membership of Negro workers."

I would agree with that.

"Equal opportunity for employment, wages, hours, and working conditions for Negro and white workers."

And I would agree with that, and I would also say that [fol. 162] apparently this is a copy from the Library of Congress, and I hope you are not going to assume the Library of Congress' guilt by association by having it in their areas.

Q. As I understood you, you agreed with eight of those demands and had not made up your mind on the ninth one?

A. That is correct.

OFFER IN EVIDENCE AND OBJECTION THERETO SUSTAINED

Mr. Watkins: We offer that as Defendants' Exhibit 2.

Mr. Rachlin: May I see it?

(Counsel hands to counsel opposite)

Mr. Rachlin: Before I agree or disagree with the admission of this document, may I question the witness about it?

The Court: Yes, sir.

Examination.

By Mr. Rachlin:

Q. Father Jones, you didn't make any comment with regard to the introductory remarks above the words.

Mr. Watkins: I didn't ask about that. I asked about the nine demands as such. If he wants to question him about it as his own witness, he can do that.

The Court: Instead of letting him take him on redirect after you get through, I'm going to let him do it now.

[fol. 163] (Mr. Rachlin continues:)

Q. Would you read it?

A. "Daily Worker, May 26, 1928, Page 6. The Communist Party considers it as its historic duty to unite all workers, regardless of their color, against the common enemy, against the master class. The Negro race must understand that Capitalism means racial oppression and Communism means social and racial equality."

Now, I am not a Communist; I disagree with the *Communisty* party principles; I am against their working in our country to unite workers under their system for any cause. I am a member of a capitalistic system. I own a few stocks and bonds, and I would like to own more; and capitalism does not mean racial oppression; communism does not mean social and racial equality. Witness the terrible class systems and what those people have done to Hungary and to Czechoslovakia and other such places, and I in no way agree with the principles of the Communist Party. It seems to me, sir, that it's sort of like presenting to me a document of the Russian Orthodox Church, where it says, "I believe in Jesus Christ," and you'd say, "Do you agree with that principle that that Communist agrees [fol. 164] with?" and I'd say, "Sure, I believe in Jesus Christ," and if he happens to believe in it, I'm glad he does, but that doesn't mean I'm a Communist, because on some things we hold similar views.

Mr. Watkins: I don't recall that anybody asked you whether you were a Communist.

The Witness: But I said—

The Court: Just a minute, Gentlemen. Let me interrupt there. He has offered that in evidence. Is there any objection?

Mr. Rachlin: I object to the document on the grounds I previously stated at the time I moved for mistrial.

The Court: I wouldn't sustain it on that ground, but it is not properly authenticated as a document to be admissible in evidence, so that if you object to it on the ground it is not properly authenticated to be a correct copy out of the Library of Congress, then I would sustain the objection.

Mr. Rachlin: Well, I previously objected on that ground, Your Honor.

The Court: Very well, then. I sustain the objection, Mr. Watkins.

[fol. 165] Mr. Watkins: I remind the Court that counsel himself has questioned the witness about parts of this document and even had him read parts of it into the record.

The Court: That oral testimony has gone in the record, and that is in. He testified as to whether or not he agreed, and I think that was competent. But the document itself is not admissible because it is not properly authenticated.

Cross examination.

By Mr. Watkins continued:

Q. Father Jones, who provided the funds for your trips to Jackson?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule the objection.

A. I provided the funds for my trip to Jackson.

Q. Did any organization reimburse you?

Mr. Rachlin: Objection.

The Court: Overruled.

A. No, not on the original trip.

Q. You didn't pay for the original trip at all, did you?

A. I just got through telling you that I paid for the original trip out of my own pocket and was not reimbursed.

Q. You mean that ESCRU did not provide any of the [fol. 166] funds for your original trip?

Mr. Rachlin: The witness answered the question. He is just arguing.

The Court: Overrule the objection.

A. On the original trip to Jackson, I paid my own way.

Q. And you were not refunded by any organization?

Mr. Rachlin: Same objection.

The Court: Overrule the objection.

Mr. Rachlin: This is the second time the question has been asked in those words.

The Court: Counsel, you have practiced law long enough to know that on cross examination the first answer a witness gives is not necessarily taken. The cross examiner is allowed to inquire further as to the truthfulness and untruthfulness, and for that reason I overrule the objection.

A. I was not reimbursed.

Q. Any part of it?

A. Of the original trip.

Q. Were you reimbursed any of your expenses on the next two trips?

[fol. 167] A. Yes, sir. After I was illegally arrested and illegally convicted and illegally incarcerated and then appealed, and then was forced to come back for arraignment, which cost a lot of money I didn't have, and forced to come back for a trial, which cost a lot of money I didn't have, I was reimbursed for that, yes, sir.

Q. By whom?

A. By the Episcopal Society—ESCRU. I don't belong to this organization.

Q. It is ESCRU?

A. Yes. And I'm not quite sure what it really is.

Q. When the $500.00 bond money was refunded to you, what did you do with that?

A. I sent it back to ESCRU.

Q. Had ESCRU furnished it in the first place?

A. Apparently the people in Chicago, my home town and diocese, who raised the money, had forwarded it to Atlanta, and they in turn had forwarded it to Mr. Young, who finally got me out on bond.

Q. So your bail money was posted by ESCRU also?

A. My bail money was posted by Attorney Young, and apparently all they were was an intermediary, the same perhaps as the postman.

[fol. 168] Q. You went to New Orleans before you came to Jackson, didn't you?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule the objection.

A. Yes, sir. I went to New Orleans, Louisiana, the place where the prayer pilgrimage began.

Q. You were enroute to the church convention in Detroit, Michigan, weren't you?

A. That was our ultimate destination, Mr. Watkins, yes, sir.

Q. Your home was in the State of Illinois, wasn't it?

A. Yes, sir, and still is.

Q. Did you consider New Orleans, Louisiana, on the way from Illinois to Michigan?

Mr. Rachlin: Objection. The man doesn't have to account for his travels.

The Court: I overrule the objection.

A. Mr. Watkins, I wanted to go to Detroit, Michigan, where my church was meeting in general convention, by means of a prayer pilgrimage. Now, this is not uncommon; prayer pilgrimages go to Our Lady of the Lourdes in France, and although I probably could fly directly from [fol. 169] Chicago to Paris, if a pilgrimage would start in London, I would fly to London and join the prayer pilgrimage to Lourdes. Any religious prayer pilgrimage has to start someplace. It may be out of the way for some people going to it, but that's the way pilgrimages are. It's a long religious tradition, sir, of many hundreds of years. And although it was not on the way, I had to go to New Orleans to get on the pilgrimage.

Q. What time on what day did you reach New Orleans?

A. I arrived by jet aircraft on the evening of May 11th.

Q. Wasn't it September?

A. —I'm sorry. September 11th, yes. Thank you.

Q. That was at about six o'clock P.M., wasn't it?

A. Approximately, yes, sir.

Q. That plane reaches New Orleans about five minutes after it leaves New York, doesn't it, with the difference in time?

A. I wouldn't be able to tell you about any plane that leaves New York, because I didn't come from New York; I came from Chicago. I could not give you the exact departure time or arrival time because I don't have the tickets with me.

Q. That is all right. Did you attend the workshop for your group, the meeting for your group held the night of [fol. 170] September 11th in New Orleans?

A. I arrived at a YMCA, Young Men's Christian establishment, and there/were a group of people there. Some were talking in corners; some were in sport clothes; some in collars. I stayed about five minutes because I immediately saw some old friends of mine that were clergymen, and left.

Q. What time did you get to that meeting?

A. Around five of nine, maybe.

Q. What time had the meeting started?

A. I have no idea, sir. I wasn't there.

Q. Didn't you hear the talks that were made at the meeting?

A. I don't even know if any talks were made. If I wasn't there, how could I hear any talks?

Q. Haven't you heard the other plaintiffs in my presence tell me in detail about those talks that were made at that meeting?

A. I thought that was hearsay. Do you want me to tell you what I heard them say?

Q. If I ask you for a statement made by these other plaintiffs in my presence, you may feel free to tell it. You did know about that, didn't you?

A. I heard them speak, yes, sir.

[fol. 171] Q. You know there was a meeting at which talks were made, don't you?

Mr. Rachlin: Your Honor, this is badgering the witness. The witness has stated he wasn't present. The whole line of questioning is irrelevant and incompetent, and I must renew my objection.

The Court: Overrule the objection.

Q. Are you hesitant to tell me that you knew there was a meeting at which talks were made?

Mr. Rachlin: Your Honor, from the nature of this thing, Mr. Jones has said that at the time he was there he didn't know about it. Now he is asking what he learned about it later. What difference does it make what he learned about later, after this lawsuit had started?

The Court: Overrule the objection.

A. There are three questions that have been overruled, and I don't know which one to begin to answer.

Q. Let me ask them over again. You learned after you got to the meeting that earlier in the meeting there had been talks made to the group, didn't you?

[fol. 172] A. No, sir. I learned there had been talks made at the group when I heard your depositions, as you just got through saying. I went into this meeting, saw some people I knew. They were sitting around a room, and we left. Mr. Watkins, I'd like to also say that I had never been to New Orleans, and we left to go see that great city.

Q. In other words, you got into plain clothes and went down on Bourbon Street, didn't you?

Mr. Rachlin: Your Honor, I object to that question. Let Mr. Watkins explain the relevancy of that question.

The Court: Yes, I sustain the objection to that question.

Mr. Rachlin: That has nasty implications—

Mr. Watkins: —No nasty implications. That's exactly what the witness said, that they wanted to see New Orleans.

Mr. Rachlin: I move for a mistrial again on the basis of that statement.

The Court: Overrule the motion for a mistrial, and I sustain the objection to the question.

Mr. Watkins: May I ask him, Your Honor, where he was while the meeting was being held?

The Court: Yes.

[fol. 173] Q. Where were you, Reverend, while the meeting was being held at the YMCA?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

A. In the—I'm not sure when the meeting was held, but I know what I was doing when I got off the train until I got to the—

Q. Where were you between seven o'clock and the time you got to the meeting?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

A. I walked out of the airplane station and made inquiry as to which was more expensive, to go downtown in a taxi or a limousine, and asked if there was public transportation that I could ride. I was accompanied by a brother priest of mine from Chicago. We found that the two of us pooling our resources it was cheaper to take a taxi than to take the limousine, so we went to some place— We asked the taxi driver where would be a good place to get some seafood—we had always heard that the seafood was excellent in New Orleans—and he took us to some restaurant that had a French name, where we had a very excellent meal. Then I walked not far from there and went in a place called [fol. 174] the Abstinthe House or Absinthe House, or something like that—

Q. —I know what you're talking about.

Mr. Rachlin: Maybe Mr. Watkins can tell us what the name of this place is.

A. —and I met a man by the name of Kelly who grew up in Chicago who was a bartender there. And he told me the history of this famous place, and I tasted some of that beverage, which he assured me was not the same as it had been in the good old days, as he called them. Then I looked for a taxi and I started to get in a taxi and the man told me to get out. And I had originally thought it was some reason they didn't like a priest or something; I later learned that I got in the wrong color taxi. I then got in another taxi and went to the YMCA that I just originally told you about.

Q. Thank you. I believe that is all.

Mr. Rachlin: Your Honor, at this time I would like to move that the entire cross examination from the first question until the last be striken as being incompetent, irrelevant, immaterial, improper, and in violation of all the rules of evidence known to man. I have never in my life heard [fol. 175] a cross examination that was as irrelevant as this one, and I move it be striken.

The Court: I overrule the motion. Any redirect examination?

Redirect examination.

By Mr. Rachlin:

Q. What time of the night did you arrive in Jackson on the night of September 12th? Do you recall?

A. It was dark. May have been eight or nine o'clock that night.

Q. I take it from your testimony you left the next morning? Is that right?

A. Yes, sir.

Q. Did you have any plans to stay in Jackson at all?

A. No.

Q. Is it fair to say then that Jackson was merely a place that you were passing through on your way to your next stop?

A. Jackson was the terminal point we had chartered a bus. Originally we had hoped that enough people would come on the bus to defray the cost. In other words, you have to have 37 people to pay for a bus, and when only 28 came it was cheaper to just charter it to Jackson and then buy just ordinary tickets on to Chattanooga and Detroit.

[fol. 176] Q. Did you have business in Chattanooga?

A. Yes, we were to visit a number of Episcopal institutions—St. Mary's Church and Academy, run by Sisters of St. Mary—by the way, those sisters raised my mother in an orphan asylum—We were to visit St. Andrew's Priory, which is a boys school run by Holy Cross Fathers; we were to visit University of the South, which is the Episcopal University; and we were to visit Sewanee Seminary, which having come from another seminary, I was also very anxious to see.

Q. In the State of Mississippi, I believe you said you visited a school at Vicksburg and the church at McComb?

A. Yes, sir.

Q. Now, your next trip back to Jackson to arrange for your trial, the money was loaned to you by ESCRU? Is that correct?

A. On the—?

Q. For the arraignment and your trial before Judge Moore. I believe you said you didn't have the money and the money was loaned to you by ESCRU?

A. I don't know if it was loaned. I borrowed the money from St. Lennox House, and then ESCRU paid back St. Lennox House for that money. I don't know if it was loaned. I don't know if I have to pay it back or not.

[fol. 177] Q. Do you feel any obligation to return that money for having paid for your trip?

A. I would like very much to do so, but I don't have it, personally, to do so.

Q. If the jury awards you a verdict in this case, will you return that money?

Mr. Watkins: We object to that.

The Court: Sustain the objection.

Mr. Rachlin: I think, Your Honor, it is proper. If he feels an obligation to return the money—

The Court: I think that is improper. Sustain the objection.

Mr. Rachlin: No further questions.

The Court: (To witness) You may stand aside.

Gentlemen of the jury, under the instructions I gave you yesterday, I will let you separate again today for lunch and be back at one thirty. Court is recessed until one thirty.

(Noon Recess)

[fol. 178]

VOLUME II

(After Recess)

John B. Morris, called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. Mr. Morris, would you mind telling us where you live?

A. Atlanta, Georgia.

Q. The exact address?

A. 4655 Jet Road, Northwest.

Q. How long has Georgia been your home?

A. All my life.

Q. Where were you born?

A. Brunswick, Georgia.

Q. With whom do you live in Atlanta?

A. My wife and three children.

Q. You are an ordained priest of the Episcopal Church?

A. Yes.

Q. Give us a little bit of the background?

A. I was ordained a priest in 1955 and served for four years in a parish in South Carolina. I'm canonically a priest under the Bishop of South Carolina. I'm licensed by the Bishop of Atlanta to officiate there.

[fol. 179] Q. Are you associated with any organization at the present time or employed by or with any organization at the present time?

A. I'm the executive director of the Episcopal Society for Cultural and Racial Unity.

Q. Would you mind telling us what the address of this society is?

A. 5 Forsythe Street, Northwest, Atlanta.

Q. How is this organization commonly called in daily parlance?

A. The Episcopal Society, or it's called ESCRU, as the letters in abbreviated fashion spell out.

Q. Does this society have members in all of the United States?

A. We are a national organization within the Episcopal Church.

Q. I'd like to draw your attention, if you don't mind, to a period around September 13, 1961. Do you recall where you —Were you in Jackson, Mississippi, that morning?

A. Yes, sir.

Q. Did you have a destination that day, late that day?

A. We had the immediate destination of Chattanooga, and we were subsequently going to Detroit.

Q. Did you have or own a ticket on a Continental Trailways bus to Chattanooga?

A. I had a ticket to Chattanooga.

Q. Approximately when was it that you arrived in the [fol. 180] vicinity of Continental Trailways bus station?

A. About 11:25 that morning.

Q. How many of you were there?

A. 15.

Q. By what method did you reach the bus station?

A. The 15 of us by taxi.

Q. About how far was it from the point where the taxicab let the 15 of you off to the entrance to the bus station?

A. I would say 50 to 75 feet, 60 feet or so.

Q. Did you all walk to the entrance of the bus station from the taxicab?

A. Yes.

Q. Approximately how long would it take—Strike that. How long did it take you to walk that distance you have just described from the taxicab to the entrance to the bus station?

A. I shouldn't imagine more than 45 seconds or a minute, something like that. We didn't waste any time. We wanted to eat and went right on in.

Q. Well, did it take you 45 seconds or a minute?

A. I would say a minute.

Q. Did you observe any numbers of people following you on the street as you approached the bus station?

[fol. 181] A. We observed no one following us nor any aggregation of people either.

Q. You then, of course, observed no hostile signs from anybody in the vicinity as you walked together toward the entrance? Is that correct?

A. Yes, that is correct.

Q. Of the 15 of you, how many were white persons?

A. 12 were white.

Q. If you recall, how many Negro?

A. Three.

Q. Were the other plaintiffs besides yourself—that is, Father Jones, Father Pierson and Father Breeden—in this group of 15?

A. Yes.

Q. As you entered the bus station, were you among the first or back toward the rear of the group of 15?

A. I was toward the front part of the group, but there were three or four in front of me, I think.

Q. Then did you yourself enter the bus station?

A. Yes.

Q. Behind three or four?

A. Yes.

Q. Did the others enter behind you?

[fol. 182] A. Yes.

Q. Will you describe in your own words which direction did you go after you entered the entrance?

A. We walked in the front door and turned toward the left where we observed the coffee shop was down to the left through a door, and we headed toward the coffee shop.

Q. As you entered, did you observe any police officer?

A. Two standing near the front door.

Q. Did you pass by them as you walked toward the entrance of this coffee shop?

A. Well, somewhat, yes. They weren't in the way or anything. They were just standing there looking out the front door.

Q. Were they very close to the front door?

A. Fairly so, yes.

Q. Would you describe how many feet they were from the front door?

A. No more than, I'd say, eight feet.

Q. Did you walk between them and the news stand, or were they on the news stand side and you walked around them?

A. No, it was between them and the news stand, because they were standing directly/in front of the front door, and we came in and turned to the left toward the coffee shop, so the news stand was still on our left and they on our right.

[fol. 183] Q. You were here this morning then when Father Jones testified, weren't you?

A. Yes.

Q. I assume you heard his testimony as to what conversation he overheard between the policemen?

A. I heard his testimony.

Q. Did you overhear it?

A. I did not overhear what was reported there.

Q. Now, would you know and be able to identify the two policemen whom you passed in the bus station at that moment?

A. I would.

Q. Can you identify them in this courtroom?

A. Officers Griffith and Nichols.

Q. Are they the defendants sitting just before the bar there?

The Court: Call it a rail.

Q. The rail. Those are the two gentlemen you observed in the station at that time?

A. That's correct.

Q. Chief Ray wasn't there at that time, was he?

A. Not then, no.

Q. What happened? Describe what you saw or what anybody said to you and what you said to anybody at that time. [fol. 184] Just using your own words as briefly as you can, describe what happened?

A. Well, I said I was among the first four or five or so in the group, and we were coming to catch a bus some 30 or 40 minutes later. We were hungry; we had breakfast quite early that morning. We turned to the left, headed for the coffee shop, and I was among three of four or five who had gotten through the door.

Q. What door?

A. To the coffee shop. We all were in the terminal then. But when I heard a stir behind me, one of the police officers instructed those of us who had gotten inside the coffee shop to come back out into the terminal area.

Q. Would you mind telling us, to the best of your recollection, how he said to you to / come on out or whatever the words were?

A. I cannot recall the specific words. It was no more than "Come out of there" or "Come back here" or something.

Q. Did you do it?

A. Yes.

Q. Did the others who had gotten into the coffee shop do it too?

A. Yes. There were just a few of us there.

Q. Did you walk back into the main part of the station? Is that the idea?

[fol. 185] A. Back to the door between the terminal waiting room and the coffee shop, where they had detained most of our number before they had come through this door, and I simply rejoined our group there who had been detained and stopped at that point.

Q. Were you able to observe the people in the bus station at this time?

A. Yes. Having come back out of the coffee shop, I was facing into the terminal, and—

Q. What did you see among the people that were in the bus station at the time?

A. I saw nothing more than the normal business of a person en route by bus, coming and going, and I wouldn't say that more than 20 people, all told, were around the terminal, other than ourselves.

Q. Did you have the opportunity to observe whether there were any substantial number of people that followed you into the station?

A. I saw no persons following us in. Whether a few came in and out on their own business, unaware that we were standing over in the corner, I don't know, but there was certainly no evidence of a significant number of persons coming in at any point.

[fol. 186] Q. Did you hear any hostile or angry sounds from the people in the bus station?

A. No.

Q. Could you observe any threatening gestures by people in the bus station?

A. No.

Q. Did you or any of your fellow priests speak in an unusually loud tone of voice?

A. No.

Q. Did you observe any of them commit any acts commonly known as disorderly conduct?

A. No.

Q. Let's go back now. You came back through the entrance to the coffee shop. Will you describe what took place at that point?

A. The two police officers were there and told us to move on out. We said we were hungry; we said we were interstate travelers; we said we would certainly get on our bus after we could get a sandwich. This went on back and forth for a few minutes, and we asked what we had done wrong. We didn't think we had done anything wrong, and they didn't tell us anything we had done wrong.

[fol. 187] Q. You asked them what you had done that was wrong?

A. Yes.

Q. Who was the one who asked that question?

A. I can't recall. Probably several of us asked it. I think I did.

Q. There was not any doubt but it was asked?

A. Yes. We knew we hadn't done anything wrong, and we saw nothing in arrears at the station that would cause any reason for us not to be there, not to have our lunch before going.

Q. What happened after that?

A. After we talked for / a while and they said to move on and move on out, and we said, "We will. We'll get on our bus after we eat." And they finally said, "You're under arrest. Wait here." And we waited there.

Q. Do you recall which of the two officers said "You're under arrest"?

A. I'm not certain. I think it was Officer Griffith. Officer Griffith is in the middle there, isn't he?

Q. I am indicating Officer Griffith.

A. Yes. I think it was Officer Griffith.

Q. Officer Nichols was there at the same time?

A. Yes.

Q. Do you recall which of the two officers engaged in most of the conversation?

[fol. 188] A. I think Officer Griffith is the one with whom I had some conversation there at that time. I cannot to the best of my recollection tell you certainly.

Q. In any event, he said you were under arrest?

A. Yes.

Q. Did that include all 15 of you?

A. Yes.

Q. Do you recall whether the plaintiff Father Pierson was in that group?

A. Yes.

Q. Father Jones?

A. Yes.

Q. Father Breeden?

A. Yes.

Q. And of course you were?

A. Yes.

Q. What happened thereafter?

A. Well, having been instructed to wait there—and while we could not understand why they were arresting us and saw nothing wrong in what we were doing—we respected the fact of their authority and didn't attempt to move on at that point when we were ordered to wait. And we waited, [fol. 189] and then we said the Lord's Prayer together, and about that time Captain Ray came.

Q. Now Chief Ray?

A. Now Chief Ray.

Q. And indicating the gentleman to my right in the white shirt?

A. Yes.

Q. —One of the defendants in this case.

A. Yes.

Q. Up to the moment that Chief Ray arrived, did you have an opportunity to observe people in the bus station again?

A. I had to observe because we were confused, upset and disturbed over our being detained in this pilgrimage and our itinerary to Chattanooga, but I didn't get up on a chair and look around, but there was nothing anywhere to provoke my curiosity other than to just normally observe that it looked like a bus terminal in a course of a day's business.

Q. Was there a substantial number of people standing close to or near Officer Nichols or Officer Griffith?

A. I saw no group of people collected other than ourselves whom they had stopped.

Q. You were the only group collected in the entire station? Is that right?

[fol. 190] A. Well, the only group that was collected as a group. Some 20 or so folks were there looking at this situation of clergymen being arrested.

Q. Were some of the people playing the pinball machine during this time?

Mr. Watkins: Object to leading.

Q. Did you observe the conduct of some of the people in the station while you were held under arrest by the two officers?

The Court: I overrule the objection.

Q. Oh. I withdraw that question and ask if you observed anybody playing the pinball machine.

A. No.

Q. Could you see what people were engaging in their normal course of business?

A. I think they were a little flabbergasted about this situation, as we were, but I didn't see anybody playing pinball. I can't say specifically what any number of persons were doing except I saw nothing of a threatening nature anywhere.

Q. And you didn't threaten anybody?

[fol. 191] A. No.

Q. Did you observe Chief Ray enter the station?

A. I can't say I saw him walk in the door. I saw him coming toward us. I don't know that I saw him go through the door.

Q. What happened as he came to you?

A. He came to the group and said he'd get us on our bus. He wanted us to move on, and we had the same kind of conversation we had had with Officers Nichols and Griffith and indicated we would be glad to get on our bus but we were hungry and wanted to have a bite to eat beforehand, and again this exchange was repeated awhile, and we said we were interstate travelers; we had our tickets; we showed them to him; we asked what we had done wrong; and it was the same thing more or less repeated again, and finally he said, "You're under arrest. Come with me."

Q. Did Chief Ray ever tell you what you had done that was wrong?

A. Not that I heard.

Q. You were standing fairly close?

A. Oh, yes.

Q. Did you hear it? Did you hear him say that?

A. No.

[fol. 192] Q. While Chief Ray was speaking, did any of the other passengers in the station indicate that any hostile feelings—or say anything hostile to you / and your associates?

A. Such was not evidenced by sound or sight.

Q. When Chief Ray came in, then, of course, he was Captain Ray, did he speak to either Officer Nichols or Officer Griffith?

A. I think he walked immediately into our circle there and spoke to us immediately. I observed him speaking to no one else.

Q. Did they speak to him, say anything to him?

A. I don't know. He was talking to us right away so I doubt there was—

Q. Did you see him?

A. There was no conference between the two. I'm sure there couldn't have been a conference between the two. I was right there. One of them had gone— This is speculation.

Q. Then don't speculate, please. Just what you saw and heard, nothing more. Did you see either of the officers speak to Chief Ray?

A. No, sir.

Q. And you were facing them? Is that correct?

A. Yes.

[fol. 193] Q. Did you see the officers or hear the officers and Chief Ray ask anybody else in the station to leave the station?

A. No.

Q. This was from the first moment of your arrest until you were taken from the station, is that right?

A. Right.

Q. After Chief Ray said these things you have described, what happened thereafter?

A. He said to come with him, and we followed him out the back door whence he had come. That was over toward the left as you go out the back door, to the bus loading ramp area that was then vacant, and he said, "Wait here," and we did for some five minutes, perhaps, until the police wagon came and we were put in it and taken to jail.

Q. All five of you go into the wagon?

A. Yes.

Q. The paddy wagon?

A. It was a bit crowded, but we were all in there.

Q. What happened when you got—. What jail were you taken to?

A. Jackson City Jail.

Q. What happened when you were taken to the jail?

A. We were taken upstairs into the conference room and in sequence were processed.

[fol. 194] Q. Describe the processing.

A. We were interrogated by police personnel. We were fingerprinted, and we were photographed. We were required to leave our wallets and watches and such personal effects with them, and then we were forthwith taken to the cell block.

Q. By the way, have you ever gotten those fingerprints back?

A. No.

Q. What day of the week was this, if you recall?

A. September 13th, it was a Wednesday.

Q. What day of the week was it?

A. Wednesday.

Q. What day was it that you had your trial in Judge Spencer's court?

A. Friday, I believe.

Q. Two days later?

A. Yes.

Q. Were you in jail all that time?

A. Yes.

Q. Do you know, by the way, whether bail was set at this point?

A. I know of no mention of bail until our trial in Judge Spencer's court.

[fol. 195] Q. Were you present at the trial before Judge Spencer when he presided?

A. I was.

Q. Do you recall what his verdict was?

A. Guilty.

Q. Did he pass sentence upon you?

A. Yes.

Q. What was that sentence?

A. Four months and two hundred dollars. I think it was two hundred dollars.

Q. What happened immediately after he passed sentence?

A. We were taken back up to the cell and put back in.

Q. Did there come a time when you eventually left the jail?

A. Yes.

Q. How long after?

A. I and several others of the plaintiffs were released upon appeal bond a week from when we were jailed. I think it was Tuesday following.

Q. Tuesday?

A. The following Tuesday.

Q. You had by that time received the appeal money?

A. Sufficient cash funds had come spontaneously, mostly from Episcopalians around the country, but others, too, [fol. 196] and had been sent directly to Jackson, mostly to our attorney, Jack Young, and sufficient funds were in hand by Tuesday for thirteen of the fifteen of us to be released on appeal bond.

Q. And you left, I take it?

A. That is correct.

Q. Who remained?

A. Fathers Jones and Taylor remained.

Q. You heard his testimony this morning about his leaving some time later?

A. I did.

Q. Does that jibe with your recollection?

A. Yes.

Q. Do you recall where you were going when you entered the bus station on the 13th?

A. We had tickets for Chattanooga.

Q. Had you business in Chattanooga?

A. We were going from Chattanooga out for about an hour's drive to three institutions our church operates—a university and two prep schools.

Q. Then eventually you would end up where?

A. At the general convention of the Episcopal Church meeting in Detroit, Michigan.

[fol. 197] Q. How often is that convention held?

A. It meets every three years.

Q. What was the date the convention was due to start?

A. September 17th, 1961.

Q. It was your intention, I take it, to be there prior to the opening of the convention?

A. We had planned to unveil a large placard in the lobby of the convention hall that in symbolic terms said something of our concern toward segregation and the church, and would have delivered then, also, a message about the same concern, and that would have been Sunday afternoon of the 17th.

Q. Did you get there Sunday afternoon, the 17th?

A. I did not.

Q. Where were you at that time?

A. In jail.

Q. You spent approximately one week in jail, is that right?

A. Yes.

Q. How many trips have you made back to Jackson for these necessary purposes in connection with your appeal from Atlanta?

A. A trip in October 1961.

Q. A total of how many?

[fol. 198] A. Three.

Q. And these trips were from Atlanta?

A. Yes.

Q. Roughly what is the expense of each trip?

A. I estimate the total expense of air travel and miscellaneous things at around eighty dollars.

Q. For the three trips?

A. For each trip, round trip. Actually about ninety dollars when you get food and all.

Q. I take it that does not include the expenses of the trip coming here today?

A. No.

Q. Nor does it include expenses of the depositions we took in Mr. Watkins' office?

A. No.

Q. So, whatever expense there is that is additional, is that correct?

A. Yes.

Q. Have you had any other expenses in addition to what you just described?

A. Well, there was a lawyer's fee in the fall of '61.

Q. Who is that to, Attorney Jack Young?

A. Yes.

[fol. 199] Q. What was the amount of that, if you recall?

A. I think it was three hundred dollars. I will have to check my figures. This was for work and representation in our behalf right on through trial in Judge Moore's court, and it covered, of course, the firm of Young & Hall. Your question is still of other expenses?

Q. Yes, if you have any. If that is all, say so.

A. I have to get some notes to recollect this in detail.

Q. Did you have any necessary telephone calls, long distance phone calls, to make?

A. There were a tremendous number of calls and arrangements for each of these trips and the scheduling of some of the activity connected with appeal was also so indefinite and sometimes changed in the trial, the fact that we had to be on long distance to communicate with one another pursuant to coming.

Q. About how many telephone calls would you estimate were made in regard to your appeal?

A. This would be relative to all fifteen?

Q. No, just for the four plaintiffs in this case.

A. I would estimate I had to call each person around twice in connection with each trip, at least.

Q. Was there anything else, any other expenses that you [fol. 200] had? Does that about cover it?

A. That is all I recall at the moment.

Q. From the time that you were released from jail here in Jackson, have you to your own knowledge received any communications which have cast aspersions on your character?

Mr. Watkins: We object to that unless the source of the communications were disclosed and such that they would be competent in evidence and not violate the hearsay rule.

Mr. Rachlin: First I have to ask whether he did.

The Court: Overrule the objection to that.

Q. Have you received to your knowledge any communications, either in writing or in person, which have cast aspersions on your character as a result of your stay in jail?

A. Numerous communications, or personal references, or comments spoken in my presence that would be in the affirmative to your question.

Q. Approximately how many did you receive? Could you give us some figure roughly?

A. Several dozen.

Q. Did these communications make direct reference to [fol. 201] your stay in the jail in Jackson?

A. To the stay in jail, yes. They were mostly directed toward this, to the imprisonment here and the conviction. Some people didn't like our going to a school or somewhere else, but mainly it centered on reactions to being incarcerated here.

Q. Can you tell us the nature of some of these disparaging remarks that were made to you?

Mr. Watkins: We object to that.

The Court: Sustain the objection.

Mr. Rachlin: I have no further questions.

Cross examination.

By Mr. Watkins:

Q. Reverend Morris, will you please tell us what ESCRU is?

A. Episcopal Society for Cultural Racial Unity, and is an organization of clergy and laity within the Episcopal Church. In common parlance, concerned with desegregation in the church, primarily, and for the church's leadership within the community in moving toward a desegregated society, but in theological terminology, which is our primary frame of reference, be obedient to our Lord and Savior, Jesus Christ, whom we believe compels this com- [fol. 202] mitment.

Q. Is it an organization that strives for desegregation of our churches in the North and South first?

A. Our primary concern. We don't think we can settle all problems within the church before we are concerned with problems everywhere.

Q. You do have segregated churches in the North, as well as the South?

A. We have no segregated churches anywhere.

Mr. Rachlin: Your Honor, I realize that this morning I took a lot of time and since Your Honor has chosen to rule on some of these same questions that were asked this morning, I wonder if Your Honor would give me a liberty of having a standing objection to this line of questioning?

The Court: Yes.

Mr. Rachlin: I will only object if there are special additional reasons.

The Court: You may object any time you feel like it. If you feel like the standing objection I am giving to you does not cover some questions, then you can add additional objections. I will give you a standing objection to questions of this type concerning that nature or matter, and the ob- [fol. 203] jection is overruled and you do not waive it by your failure to renew it at various times.

Q. Did I understand you to say to me your church did not have segregated facilities in the North as well as in the South?

A. We have no segregated churches anywhere, to my knowledge. If you want me to explain this, I will be glad to.

Q. Well, I want you to explain to me, if you will. You are familiar with this pamphlet, Defendants' Exhibit No. 1?

A. I am not sure. I would have to see that.

Q. Well, you have seen it a number of times. Take another look at it.

A. This is what I saw in the depositions. It had one error from what—it wasn't a significant error—so in the main it is correct. This is the message that we prepared in

New Orleans when we gathered that evening September the 11th to our convention in Detroit. This is substantially that.

Q. Now I want to direct your attention to this language in this message: "Our separate but equal parish systems as it exists in the North, as well as in the South, is partly a result of the housing pattern and also a contributor to it." What do you mean by separate but equal in the North and [fol. 204] South?

A. This is in pursuance to the question about segregated churches?

Q. Yes.

A. We have no segregated churches that are by ruling or law within the church segregated. And we have very few where anyone would be turned away because of race, although they might not be cordially welcomed. We rather have the more insidious problem of separation where the customs of segregation in the community have infected the church and caused it to oftentimes follow these same patterns in practice but not by law, not by church law. So that it amounts to what would be called a separate but equal parish system, although it is no system in any official sense. The Episcopal Church is against segregation in all official commitments.

Q. You refer to it as insidious because in some communities on a voluntary basis the white people prefer to go to one church and the Colored people prefer to go to a separate church; is that what you mean?

Mr. Rachlin: That question I object to because I think it is argumentative and has nothing to do with the case.

The Court: Overrule your objection. I think it calls for a fact.

[fol. 205] Q. Is that what you refer to as the insidious statement?

A. Repeat.

Q. Did your reference to an insidious custom refer to the fact that in some communities, such as Jackson, Mississippi, for one, where you have Episcopal Churches, one serving White people and another serving the Colored people purely on a voluntary basis, is that what you had reference to?

Mr. Rachlin: Doesn't it call for a conclusion on the part of the witness that nobody is qualified to answer?

The Court: No, I will overrule the objection because I think the question is to what he meant by the "insidious custom." If that is what he means, he can so state.

A. I mean I do in fact believe this is contrary to the will and mind of Jesus Christ and it is very prevalent in the North, as well as in the South. That is what the statement here has reference to.

Q. And the practice of people voluntarily of one race going to one church and another going to another church is the insidious custom you are talking about?

A. People are free to be sinful, but it doesn't mean I approve of it just because it is the norm of the majority of consensus.

[fol. 206] Q. You consider it insidious and sinful for White people to go to church together and Colored people to go to another church together?

A. I think this crucifies Christ every time it happens.

Q. You are the director of ESCRU?

A. Executive director.

Q. And as such you organized the so-called pilgrimage, did you not?

A. I was the chief administrator in planning it. I wasn't the only one involved in this role of organizing.

Q. Did you not handle the correspondence with the various candidates who either asked to be permitted to make the pilgrimage or whom you asked to make the pilgrimage?

A. They asked to be permitted to go and I handled the correspondence.

Q. And you have official possession of that correspondence, do you not?

A. I do.

Q. Do you have it with you?

A. My attorney has correspondence with him.

Q. May I see the correspondence incident to the applications of the individuals you permitted to go on this pilgrimage, and your answers as director of ESCRU?

[fol. 207] Mr. Rachlin: I have it with me, but I have no intention of turning it over to Mr. Watkins unless Your Honor rules on this question. I don't think he has any right to see this correspondence. It doesn't relate to the question we are trying here.

The Court: I will let him answer the question first.

Mr. Rachlin: He has indicated he has turned it over to me.

The Court: The next question was he willing for me to turn it over to Mr. Watkins.

Q. Are you willing for me to see that correspondence?

A. Not particularly, because I don't think it's any of your business.

Mr. Watkins: Then I will call on the Court to ask the plaintiff to produce the correspondence which I think is material for the purposes of the trip.

The Court: Let the Court examine it and I will determine after I examine it whether it should be turned over to you.

Mr. Rachlin: I am perfectly happy to obey the Court's instructions. I am going to turn it over to you this second. Just give me a moment to find it.

The Court: Oh, yes.

[fol. 208] (The same was handed to the Court)

The Court: It is going to take about ten minutes to look at this, so I will take a recess for ten minutes.

(Whereupon the Court recessed for ten minutes)

The Court: Counsel for the plaintiff handed to the Court a group of documents called for by counsel for the defendant to be seen by counsel for the defendant, and the Court took them into chambers and read all of them over, part of which have no relevancy to the issues in this case, and part of which do. I am returning to counsel for the plaintiff those that have no relevancy or bearing, either upon the ground that they are documents that were written after the arrest of the defendants here in the City of Jackson, or such few of them as dated prior to that having no relevancy to the issues. So as to those, I will return those to counsel for the plaintiff. There are certain ones, beginning with the date of June 16, I believe, and coming on up as late as possibly September the 9th, I think that do have a bearing upon the issues in the case, and counsel for the defendant will be permitted to examine these. So, Mr. Rachlin, I will give you this back, and now some of these are dated and one or two of them are not dated, and I guess the best [fol. 209] way to keep the record straight would be for the Court to dictate to the court reporter by dates or other designated matter showing the document that is given to counsel for the defendant to see, and then the record will be clear as to the documents that are given to counsel for the defendant.

A letter dated June 16, 1961, addressed to Clerical Members, and headed Pilgrimage From New Orleans to General Convention, and signed by Reverend John B. Morris.

Mr. Watkins: May we have those marked for identification?

The Court: There are quite a number of them.

Mr. Watkins: We will mark them later.

The Court: I don't know what your procedure will be, of course, but I imagine when you read them you will want to cross examine about certain statements therein, as, of course, a lot of the document is immaterial one way or the other. So I believe I will cover it this way and have them later marked for identification.

The first one is June 16th, designated "Re: Prior Pilgrimage from New Orleans to General Convention."

The next document accompanies one of the letters—I do [fol. 210] not recall which one. It is possible it was the one of June the 16th. But it is designated "To Applicants for the Prayer Pilgrimage," and consists of one sheet.

The next one is a letter dated June 30, 1961, addressed to Clerical Members and signed by Reverend John B. Morris. The next one is dated July —, 1961, and is addressed to the Clergy, and consists of two sheets attached together and signed by Reverend John B. Morris. The second sheet thereof is dated June 16, 1961, and is addressed to Clerical Members.

The next one is dated August 4, 1961, addressed to Pilgrimage Applicants, and is signed by Reverend John B. Morris and consists of four sheets, all of which is attached together as a part of the same document.

The next one is August 19, 1961, addressed to Pilgrimage Applicants, and signed by Reverend John B. Morris and consists of four sheets all attached together.

The next one is August 26, 1961, addressed to Pilgrimage Applicants, and is signed by Reverend John B. Morris and consists of one sheet.

The next one is September 2, 1961, addressed to Pilgrimage Participants, and is signed by Reverend John B. [fol. 211] Morris, and it consists of one sheet.

The next one is dated September 5, 1961, and is addressed to Pilgrimage Participants, and is signed by John B. Morris.

The next one is September 7, 1961, addressed to the Clergy of Jackson and Birmingham, and is signed by John B. Morris.

The last document there appears the figures 9/18/61, and is one sheet headed "Statement by Reverend D. Powell Woodward for Fifteen Episcopal Ministers."

Counsel for defendant is entitled to examine these, in my opinion, and I will let him have them.

Mr. Watkins: May I have permission to examine these and reserve my cross examination on them until tomorrow?

The Court: Yes, I was going to ask you if you could continue with the other part of your examination and then, rather than to take the time out to read them now and examine them, to continue your cross examination later.

Mr. Watkins: If counsel for the plaintiffs have any objection to my retaining these overnight I will ask the Clerk's Office at my expense to photostat them now.

[fol. 212] Mr. Rachlin: No objection.

Mr. Watkins: No objection to my keeping them?

The Court: And they will either be returned to counsel for plaintiff when you shall have finished with them, unless any of them shall be admitted into evidence.

Mr. Rachlin: I would like Mr. Watkins' assurance that he will not make photocopies or other copies of these documents.

The Court: I will permit that, Mr. Watkins. You will not make any photographic copies of them unless after you shall have examined them you deem that you are entitled to have photostatic copies made and apply to the Court for that, and I will rule upon it at that time. But do not make any copies. Do not make any copies of them in any manner whatsoever, without first applying to the Court.

Mr. Watkins: There is no objection to my making pencil notations of some of the language in order to cross examine the witness as to them?

The Court: No, that will be all right, you can do that. Make any notations on the documents you desire.

Mr. Rachlin: I, of course, reserve my right at that time [fol. 213] to object to any particular question as to the documents.

The Court: Oh, yes.

Cross examination (continued).

By Mr. Watkins:

Q. Reverend Morris, who was the first person who suggested this pilgrimage?

Mr. Rachlin: Objection as incompetent and irrelevant unless it is one of the plaintiffs in this case.

Mr. Watkins: That is what I am trying to find out.

The Court: Overrule the objection. You may answer the question.

A. There was no one person who suggested the pilgrimage as it finally became settled, the itinerary, the format that it encompassed. I was probably the first to raise some question of some kind of pilgrimage like this, but it was in conversation with a great many people, the format as it was developed.

Q. The first discussion of this proposed pilgrimage, did it arise in Richmond, Virginia, during the month of June 1961?

A. Yes, I was in Richmond when I first discussed it with a group of people.

[fol. 214] Q. And at that time the Freedom Ride invasion of Jackson, Mississippi, was in full bloom, was it not?

Mr. Rachlin: I object to the question and to the form of the question.

The Court: In view of the contents of the documents that I have read, I will overrule the objection because I think it competent, or will become competent during the progress of this trial.

A. I don't know of an invasion of Jackson since the Civil War, sir.

Q. Let me ask you if I didn't ask you that precise question on your deposition, and I will read you the question I asked:

"Question: And at that time the Freedom Rides in Jackson were in full bloom?

"Answer: I cannot remember clearly, but most likely it was."

Was that your answer?

A. Yes, I am sure it was.

Q. Did you follow that in the press, the Freedom Ride invasion?

A. The Freedom Ride movement I did follow in the press.

Q. Started in April and lasted through September, didn't it?

A. No.

Q. Well, now, I will ask you if I didn't ask you that precise question on your deposition and if your answer [fol. 215] wasn't this: "I guess we were some of the last arrested on those same charges. So, then, we were arrested in September. I am not sure when it started. We had been over that here earlier, you mentioned Alabama."

A. What was the last of that?

Q. "We had been over that earlier, though. You mentioned Alabama."

Mr. Rachlin: I can't see how anybody in the context of this, taken in the midst of thirty or forty other pages, and it obviously refers to other questions and other things asked, and I ask that it be framed some other way.

The Court: He read the question to the witness. I think it's a competent question. When you take him on redirect examination you, of course, if there is anything you desire to clarify by some of the other testimony, you have that privilege.

Mr. Rachlin: I object to the question and object to the answer being read.

The Court: Overrule the objection.

A. I said we had been over that before. I was repeatedly having to respond to your efforts to describe our pilgrimage as a Freedom Ride per se, exclusively, without all of the [fol. 216] ramifications that were set forth in our depositions that involved religious convictions on our journey. I acknowledged in my answer in the deposition that we were arrested in September and you asked were we part of this thing that went on from April to September. I don't concede your point that we were a Freedom Ride.

Q. Reverend, my question to you originally here today was, it started in April and lasted through September, didn't it? You gave me a negative answer here today. Now, I called your attention to the fact when you were asked that in February your answer was, "I guess we were some of the last arrested on these same charges." Now, explain to me and the jury the difference in the two answers.

Mr. Rachlin: It is clear from the context of that question and the answer that was read that the answer was not responsive to the question that Mr. Watkins asked. Now, the question he asked was referring to the Freedom Ride started in April and lasted through September. Mr. Morris's answer was not responsive. He said, "I guess we were some of the last arrested on these charges," not referring to the other part of the question that Mr. Watkins [fol. 217] is trying to tie into this, and I submit the answer and the question are both improper and ought to be excluded, and if Mr. Watkins wants to ask the question again then I will raise whatever objection I have at that time. But it is clear and we can't take this out of the context.

The Court: I will overrule the objection and let him say whether that was his answer or not. If it wasn't, then of course, it could be used for impeachment purposes. If it was his answer, then it is competent. So I will overrule the objection.

Q. Was the answer I have just read to you from your deposition the answer you gave to that question on your deposition?

A. I examined my deposition and it seems to be correct. I haven't looked at it there, so I would have to.

Q. I am referring to Page 7, the last complete question and answer. "It started in April and lasted through September."

"Answer: I guess we were some of the last arrested on those same charges."

Was that your answer?

A. In my deposition, yes.

Q. Do you make that same answer here today?

A. I will say we were the last arrested similar to the [fol. 218] charges on which Freedom Riders were arrested.

Q. You and I have no quarrel.

A. But I do not concede that we were Freedom Riders. I will be glad to go into this more.

Q. I realize you are not willing to state openly that you are Freedom Riders.

Mr. Rachlin: That is an offensive remark and ought to be stricken.

The Court: I will strike that and, Gentlemen, you disregard the remark of Mr. Watkins.

Q. You did approve of the activities and the purposes of the Freedom Riders?

Mr. Rachlin: Objection, not relevant to this proceeding. This is a case we are trying for false imprisonment and whether the defendants properly or falsely imprisoned these people. We are not concerned with the views of Mr. Morris or anybody else in the United States. I repeat myself, this is not getting across to the Court. We are trying the wrong case.

The Court: Overrule the objection. I think it competent to the issues in this case. You may answer.

[fol. 219] Q. My question was, did you personally approve of the activities and purposes of the Freedom Riders?

A. Generally, I personally approved.

Q. Reverend Morris, your group met at Tougaloo the night of September 12, 1961, didn't it?

A. Yes.

Q. At that time you had a meeting, at which time your plans for the next day were discussed, did you not?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

A. Yes.

Q. How many of your group was present at Tougaloo that night?

A. I think that all twenty-eight of our number were present then.

Q. That night you agreed that the next day you would divide yourselves into two groups, didn't you?

A. Yes.

Q. One group was to go directly to Chattanooga, Tennessee, and the other group was to go to Jackson, Mississippi, is that right?

A. Yes, right. I was in the group that went to Chattanooga.

Q. You hesitated.

[fol. 220] A. No, that is correct. You are correct, I was in the group that was due to go to Chattanooga.

Q. Where was the other group going?

A. They were coming into the City of Jackson to call on religious leaders, clerical and lay.

Q. When your group that went to the Trailways Bus Station went there as a group, the fifteen of you were dressed in clerical garb, weren't you?

A. That is correct.

Q. You had two other members of your group there in what I, without reflection, will describe as plain clothes, without disclosing your clerical garb, didn't you?

A. They were dressed informally, yes. They were not wearing clerical clothes such as I am now.

Q. Two members of your group went down there not dressed as preachers, didn't they?

A. That is right.

Q. They were Reverend Boyd and Reverend Zimmer, weren't they?

A. They were Reverend Boyd and Reverend Zimmer, yes.

Q. They went there for the purpose of being observers of what took place when you all were there, didn't they?

Mr. Rachlin: I'm going to object to the question. First, [fol. 221] that calls for a conclusion on the part of this witness; and second, it is irrelevant, incompetent and immaterial.

The Court: Overrule the objection.

Q. What was the purpose of Reverend Boyd and Zimmer going to the station dressed as laymen rather than in clerical garb as clergymen?

A. They came to see us off. They came to see us off and be assured that we went on our way safely. In this sense, then, to observe is to perceive, to know information, to know whether we went on our way. Yes, they were observing.

Q. Why did they go in lay clothes and not in clerical garb?

A. They were not a part of our group going to Chattanooga. They were a part of the group going into Jackson to call on religious leaders here.

Q. Did the group that stayed in Jackson to call on leaders all take off their clerical garb?

Mr. Rachlin: I don't see the relevancy. How does he know what was in the mind or what the people who remained in Jackson did when he was someplace else?

The Court: Overrule the objection. I am not comment- [fol. 222] ing on why I overrule the objection other than to say I think it is admissible.

Q. Were those the only two that took off the clerical garb, or did the other thirteen?

A. Might have taken them off, I don't know. I think if they were calling on clergy they probably would have dressed more formally.

Q. Why did the two who went to the Trailways to observe take off their clerical garb?

A. You would have to ask them.

Q. You don't know?

A. No.

Q. You have Reverend Zimmer here as a witness?

A. We will.

Q. He undoubtedly can answer that question for me?

A. Yes.

Mr. Rachlin: May I ask why we go all through this when Mr. Watkins knows Mr. Zimmer is here?

Mr. Watkins: I think I am entitled to find out if this witness knows.

The Court: That is right. This witness answered the question and he didn't know and that ends it.

[fol. 223] Q. In the Tri-State Bus Station on not one but on numerous occasions you and the other members of your group refused to obey the orders of the Jackson Police to disperse and move on?

A. One occasion. Several requests within that one occasion.

Q. Several requests over a period of some fifteen minutes?

A. Well, perhaps less time than that.

Q. You fix the time.

A. Ten minutes.

Q. Several requests were made by Jackson Police to you and your group to move on over a period of approximately ten minutes and you refused to do so, didn't you?

A. Exactly.

Q. Now, Reverend, after being convicted in the Municipal Court and after appealing your case to the County Court, you learned that the County Judge was considering dismissing the cases against you ministers, didn't you?

Mr. Rachlin: I object to that question. What possible reference can that have here?

Mr. Watkins: I want to show that—.

The Court: I see. I will overrule the objection. I think it is competent.

A. I was advised by telephone on a day in early April [fol. 224] that that morning the Judge had dismissed charges against us out of respect for the Episcopal Church and certain reasons that seemed rather unusual for a Judge.

Q. And you took strong exception to that action on the part of the County Judge? You thought that was a terrible thing, didn't you?

A. I was very pleased, personally, because it meant I wouldn't have to go through with all this trial and all. I was disturbed for the sake of the integrity of the judge and also for the sake of the integrity of the church. It seemed like the church had to be treated in a special way. That was the only thing I was disturbed about, although, personally I was glad, secretly, in one sense. I couldn't ask for special treatment for the Episcopal Church and I really couldn't accept it; I had to object to it, but I had no, you know, personal grievance about it.

Q. Didn't you say in your deposition that for the charges to be dismissed against the ministers and not against the Freedom Riders would be a terrible thing?

A. Well, I think so, yes.

Q. In other words, you were insisting that your group be treated just like all the other Freedom Riders?

A. Well, we never denied that the facts surrounding our [fol. 225] arrest, as we were dealing with a moment ago, were similar.

Q. You wanted your group to be treated just like the other Freedom Riders?

A. I wanted justice to be accorded everyone who was arrested on the same charge under the same kind of situation.

Q. You did not want dismissal of the charges against your group if there wasn't to be against all the Freedom Riders?

A. No. Our visit back to Judge Moore's Court did not in any wise say, "Take this special treatment back." We could not presume to hand back the dismissal. Rather, we came back out of a concern over the others who were not being treated this way.

Q. And you did not want to be dismissed unless the others were?

A. That never came up. Our point simply was to emphasize the fact that the others had not been dismissed—why not?

Q. I want to ask you if on February the 15th in your deposition you were asked this question:

"Question: You said that if he dismissed them out of respect for the clergy that would have been a terrible thing?"

And your answer was, "It would have been."

A. That is right.

[fol. 226] Q. Reverend, you live in Atlanta, Georgia, I believe?

A. That is correct.

Q. Do your children go to a public or a private school?

A. They go to a church school.

Q. That is a private school?

A. Private church school.

Q. Is it a segregated school?

A. Unfortunately, I have to say very probably it is.

Q. Don't you know?

A. I will tell you, if you want, that recently they rejected a Negro applicant. I am hoping they are going to accept some others that are now in process. It is not a definite policy. The school will not say they have a definite policy yet.

Q. Did you testify in the Municipal Court?

A. No.

Q. Did you testify in the County Court?

A. No.

Q. Did Reverend Jones testify in the Municipal Court?

A. No.

Q. Did he testify in the County Court?

A. Yes.

Q. Did any of the plaintiffs testify in County Court? I think you are mistaken is the reason I am repeating the [fol. 227] question.

A. Jones was the case that was brought up first in County Court. It was upon his case the acquittal came.

Q. My question was did he take the witness stand.

A. I thought he did, but if I am in error—.

Q. I think you are in error. You are not sure?

A. I know it wasn't anyone else.

Q. Did any one of your four plaintiffs suing here today testify in the Municipal Court?

A. I will say I don't know.

Q. You didn't?

A. No.

Q. Did any of you four suing here today testify when the case was retried in County Court?

A. I don't know.

Q. You didn't?

A. Right.

Q. And you know of none that did?

A. I don't know.

Q. Did police officers testify? Different police officers did testify in the two Courts, didn't they?

A. Yes, it was Captain Ray in City Court and one of the two police officers here next to the captain over there in [fol. 228] the County Court.

Q. Who were your attorneys in the Municipal Court?

A. Mr. Young and Mr. Rachlin.

Q. You have told us in your direct what Mr. Young's fee was and who paid it, is that correct?

A. I beg your pardon?

Q. You have told us what Mr. Young's fee was and who paid it?

A. I said I thought it was three hundred dollars. I am not certain.

Q. And that ESCRU paid it?

A. And that it went to the firm of Hall & Young, because Mr. Hall was in our case in the County Court and so they were both—.

Q. My question is who paid it.

A. The prior Pilgrimage Appeal Fund paid it.

Q. Who paid Mr. Rachlin's fee in the Municipal Court and the County Court?

Mr. Rachlin: Objection. Who paid a fee or whatever else, how is that relevant to this case?

The Court: Yes, I sustain the objection.

Mr. Watkins: I am certainly abiding by Your Honor's decision, but let me state my purpose in asking this question. It is my theory that one or more organizations financed this entire trip and that included the expenses of [fol. 229] the trip as well as the attorney's fees arising out of the expedition. Now, I do not press my right to ask the question, I merely wanted to make it clear why I asked the question.

The Court: I adhere to my ruling and sustain the objection.

Q. You knew at the time of your trial in Municipal Court, and you now know, that Mr. Rachlin is general counsel for the Congress of Racial Equality or CORE?

Mr. Rachlin: Your Honor, is a client accountable for the attorney's activities just as the City of Jackson and all Mr. Watkins' corporate clients are not accountable for his acts here today?

The Court: Well, it depends upon the circumstances of each particular case, so I will overrule the objection. I think that is competent.

A. I know that Mr. Rachlin is a member of a New York firm and that he has some relationship to the legal staff of CORE. I don't believe he keeps his office there. I have been in his office, which is in the firm's office.

Q. You don't know that he is general counsel for CORE?

A. I didn't know his title. I knew he was chief legal ad- [fol. 230] visor for CORE. If it is general counsel, I am glad to know now.

Q. Did you meet with Tom Gather while you were in Jackson?

A. He came to the jail to see us—or was it after the jail?

Mr. Rachlin: Objection.
The Court: Overruled.

Q. Do you know Tom Gather's connection with the Congress of Racial Equality, or CORE, in Mississippi?

A. I knew at the time when I met him here he was associated with CORE.

Q. In what respect?

A. I don't know.

Q. You didn't know he was field secretary for CORE in Mississippi?

A. I knew that he had this job. I don't know what the title was. I had not met him until I was in the jail.

Q. With reference to your expenses to Jackson that you testified about on direct examination, who paid those or reimbursed you, if anybody, for them?

A. The Episcopal Society for Cultural and Racial Unity.

Q. That is what I refer to as ESCRU?

A. Yes.

Q. Reverend Morris, at the time of your visit to Jackson, [fol. 231] were there conditions which you would describe as racial discrimination existing in our own community?

A. Oh, yes.

Mr. Rachlin: Objection. I wasn't aware the City of Atlanta was on trial in this case. I was aware the defendants are on trial as to whether they committed a false imprisonment.

The Court: Sustain the objection on that question.

Q. Didn't you as an Episcopal minister living in Atlanta, Georgia, feel that your time could be better spent on problems of that kind at home rather than in Jackson, Mississippi?

Mr. Rachlin: Objection.
The Court: Sustain the objection.

Q. I note on the papers filed in this case that one of your original attorneys in this case was William Higgs, is that right?

A. You want me to answer? My answer is yes.

Q. Is he now one of your attorneys in this case?

Mr. Rachlin: I am going to object to that question.

The Court: I sustain the objection.

Mr. Watkins: Subject to my right to cross examine this [fol. 232] witness about the documents that have been made available to us, I have no further cross examination. Wait just a minute.

Further cross examination.

By Mr. Watkins:

Q. In making your trip to Jackson, Reverend Morris, you were apprehensive of either violence or being jailed, or both, weren't you?

A. We didn't know what you all might do here, so we were apprehensive. But we weren't making a trip to Jackson—we were making a trip to Detroit. We were going through Jackson, as well as many other cities en route.

Q. You knew your trip was being widely publicized by radio, television, newspaper and otherwise?

A. It was not widely publicized until it started.

Q. I mean after it started it was widely publicized?

A. We didn't know how widely, but we saw some publicity about it after it had started.

Q. And you anticipated there would be a tense situation in Jackson when you arrived here, didn't you?

Mr. Rachlin: Object to the question.

The Court: Overrule the objection.

A. We were an integrated group of clergy and we knew [fol. 233] we were going to certain regions of the country where this might cause someone not liking such a group, but not just Jackson.

Q. Well, when I refer to Jackson I am referring to your trip in the South generally. You anticipated a tense situation among the people in the Southern communities in which you were going?

A. Just the prospect of some White people not liking us, while most Negroes would be glad to see persons together on a harmonious and happy and integrated basis, while some Whites would not object to it, either. I mean some White citizens we knew might be upset over being an integrated group of clergy.

Q. You knew you were on a trip involving a matter that was highly controversial among the people of a town such as Jackson, Mississippi?

A. Because we were integrated we knew this was controversial.

Q. In coming to Jackson, didn't you actually want to be jailed and hoped that you would be jailed?

A. No.

Mr. Rachlin: Your Honor—

Mr. Watkins: He has answered no.

The Court: I would have overruled it because in view [fol. 234] of what I have read I think it is a competent question.

Mr. Watkins: Those are all of the questions I have subject to our right to put him back on cross examination.

Mr. Rachlin: Because I was conferring I don't know what the answer was.

The Court: Do you want to redirect or would you prefer to wait until cross examination is completed?

Mr. Rachlin: I have a few things that, with Mr. Watkins' permission, I was neglectful of one or two things that I should have put on on direct.

The Court: Very well, you may examine him further.

Redirect examination.

By Mr. Rachlin:

Q. I forgot to ask you were you present in County Court on the appeal trial of Father Jones, who testified this morning?

A. Yes.

Q. Were you present when Judge Russell Moore rendered his verdict in open Court?

A. Yes.

Q. Then were you present when City Attorney Jack Travis got up and stated that the evidence in all the other [fol. 235] cases was the same as in Father Jones' case and he moved to nolle prosequi all the other cases?

A. Yes.

OFFER IN EVIDENCE

Mr. Rachlin: With that in mind, I would like to offer this authenticated record of the entire appeal from the initial stages in Judge Spencer's Court through the nolle prosequi in Judge Moore's Court, authenticated by Deputy Clerk Robert E. Lilly of the Circuit Court and the County Court of Hinds County.

Mr. Watkins: No objection.

The Court: Let it be received in evidence and marked by the court reporter.

(Same was received in evidence and marked as Plaintiff's Exhibit No. 2; which exhibit follows here below:)

EXHIBIT PLAINTIFF #2

MAY 14 1963

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, H. T. Ashford, Jr., Clerk of the Circuit and County Courts, and custodian of the said records in and for the said State and County, hereby certify that the foregoing 8 pages contain a true and correct copy of all the pleas and proceedings had and done in the case of State of Mississippi vs John Burnett Morris in the County [fol. 236] Court of the First Judicial District of said County in said State, and being case No. 12935.

Given under my hand and the seal of the County Court of said County and State this the 8 day of May, 1963.

H. T. Ashford, Jr. Circuit and County Courts, Hinds County, Mississippi; Robert E. Lilley, D.C.

(Seal)

No. 12, 935

(Filed Oct. 2, 1961)

October 2, 1961

County Court Clerk
Hinds County Courthouse
Jackson, Mississippi

Dear Sir:

Section 1205 of the Mississippi Code of 1942 provides that "The Justice of the Peace, or Mayor, or Police Court from whose judgment convicting of a criminal offense an appeal shall be taken, shall at once transmit to the Clerk of the Circuit Court the bond taken by him and a certified copy of his record in the case, with all the original papers in the case, as in appeals in civil cases."

In accordance therewith, I am enclosing herewith a cer- [fol. 237] tified copy of my record in the case of State of Mississippi versus John Burnett Morris, with all the original papers in the case to be dealt with according to law.

With very best regards, I remain,

Very sincerely yours,

/s/ James L. Spencer, Police Justice and Ex Officio, Justice of the Peace, City of Jackson, Hinds County, Mississippi.

JLS:ssw

•••

IN THE POLICE COURT OF THE CITY OF JACKSON, MISSISSIPPI

Docket No. 19

Page No. 411

STATE OF MISSISSIPPI

vs.

JOHN BURNETT MORRIS

CERTIFICATE

(Filed Oct. 2, 1961)

I, James L. Spencer, Police Justice and Ex Officio Justice of the Peace, in and for the municipality of Jackson, Hinds County, Mississippi, do hereby certify that the attached and within:

1. Affidavit
2. Order for Cash Appeal Bond

[fol. 238] 3. Copy of Judgment

4. Notice from Sheriff
5. ....
6. ....

is a certified copy of my record in the case, with all the original papers in the case.

WITNESS MY SIGNATURE, this the 2nd day of October, 1961.

/s/ James L. Spencer
Police Justice and Ex Officio Justice
of the Peace, City of Jackson, Hinds
County, Mississippi.

(558-1)

GENERAL AFFIDAVIT

(Filed Oct. 2, 1961)

STATE OF MISSISSIPPI
COUNTY OF HINDS

This day personally appeared before me, the undersigned James L. Spencer, a Police Justice of the City of Jackson, and Ex-Officio Justice of the Peace of said City, J. L. Ray who, being by me duly sworn, makes affidavit that John Burnett Morris on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that [fol. 239] a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there wilfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi.

/s/ J. L. Ray
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME this the 15 day of Sept., 1961.

/s/ James L. Spencer
Police Justice and Ex-Officio
Justice of the Peace

[fol. 240]

Docket No. 19

Page No. 411

STATE OF MISSISSIPPI

vs.

JOHN BURNETT MORRIS

JUDGMENT

(Filed Oct. 2, 1961)

This cause this day coming on for trial and the defendant being arraigned in court on a charge of violation of Section 2087.5 of the Mississippi Code of 1942, and having pleaded not guilty and the court having heard testimony and being of the opinion that the defendant is guilty, it is therefore considered by the court and so ordered and adjudged that the defendant Serve a jail term of 4 months*and* pay a fine of $200.00 and *bd* committed to jail until paid.

ORDERED AND ADJUDGED, this the 15th day of September, 1961.

/s/ James L. Spencer
Police Justice and Ex Officio Justice of the Peace, Hinds County, Mississippi

Disposition of Defendant: Mittimus to Sheriff

[fol. 241]

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON, FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON

vs.

JOHN BURNETT MORRIS

ORDER FOR CASH APPEAL BOND

(Filed October 2, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, John Burnett Morris by and through his attorney, for authority to post a Cash Appeal Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve as surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, John Burnett Morris, be and he is hereby authorized to post a Cash Appeal Bond of Five Hundred ($500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

ORDERED AND ADJUDGED on this 18 day of September, 1961.

/s/ James L. Spencer
Municipal Judge & Ex-Officio
Justice of the Peace

[fol. 242]

Approved and agreed to:

/s/ (Signature illegible)
City Prosecutor

/s/ JACK H. YOUNG
Of Counsel for Defendant

* * *

Cash Bond is accepted because John Burnett Morris is a non-resident of the State of Mississippi and knows no person within the State who has property and is willing to sign bond.

APPEAL BOND

(Filed Oct. 6, 1961)

#12,935

STATE OF MISSISSIPPI)
COUNTY OF HINDS)

KNOW ALL MEN, That we John Burnett Morris Principal, and .... and .... sureties are held unto the State of Mississippi in the penal sum of ($500.00) Five Hundred & No/100* Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our names this 18 day of September, A.D., 1961.

The condition of the above obligation is that the above named John Burnett Morris on the 15th day of September [fol. 243] A. D., 1961, before the Municipal Court in and for the said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum of ($200.00) $200.00 and four months in jail dollars and all costs. And the said John Burnett Morris hath prayed an appeal of the said judgment to the next term of the County Court in and for said County and State.

NOW, THEREFORE, If the said John Burnett Morris shall appear in person at the next term of the said County Court, and there remain from day to day and from term to term until discharged by law from the said charge, there then this obligation shall be void, otherwise it shall be in full force and effect and binding on all parties, joint and several, therein named.

Given under our hands, this 18 day of September 1961.

/s/ JOHN BURNETT MORRIS Principal
4655 Jett Rd. N. W. Surety
Atlanta 5, Ga. Surety

The foregoing Bond was filed and approved this 19 day of September 1961.

J. R. GILFOY,
Sheriff and Tax Collector
Sheriff of Hinds County
By /s/ FRED PICKETT
Deputy Sheriff

(Filed Oct. 2, 1961)

[fol. 244]
Honorable James L. Spencer
Municipal Judge
Jackson, Mississippi

Dear Sir:

Pursuant to Section 1204, Mississippi Code of 1942, as annotated, I, the undersigned, Sheriff of Hinds County, Mississippi hereby advise you that I have taken a cash appeal bond from the following named individual, after having duly approved the same; that I have further turned over the said bond to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi.

I hereby notify you as Municipal Judge of the City of Jackson, Mississippi, that an appeal has been taken with regard to said individual and I direct you to send up all papers regarding said individual to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi, as if the appeal bond had been filed with you, from whose judgment the appeal was taken.

Name	Date of Bond
John Burnett Morris	Sept. 19, 1961

Thanking you for your compliance with this request, I remain,

Sincerely yours,

/s/ J. R. Gilfoy
J. R. Gilfoy, Sheriff
Hinds County, Mississippi

by /s/ Fred Pickett, D. S.

[fol. 245]

12935

State of Mississippi

vs.

John Burkett Morris

It is ordered and adjudged that a Nolle Prosequi be and the same *in* hereby entered in the above styled and numbered cause on motion of the City Prosecuting attorney.

Russell D. Moore
County Judge

State of Mississippi,
County of Hinds

I, H. T. Ashford, Jr., Clerk of the Circuit Court in and for the said State and County do hereby certify that the above and foregoing is a true and correct copy of the original Minutes County Court and the same is of record in this office in Minute Book No. 21 at page 311.

Given under my hand and the seal of the Circuit Court at Jackson, this the 7 day of May 1963

(Seal)

H. T. Ashford, Jr.,
Circuit Clerk

By /s/ Robt. E. Lilley, D. C.

[fol. 246]

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Watkins: I did not object to that document just introduced, but I do object to counsel's statement preceding and explaining the document because I don't think they do so accurately. The document is the official record and speaks for itself. I move the Court to strike any of counsel's explanatory remarks which differ from the official document itself.

The Court: Overrule the motion. It is so nearly like the document. I understand what it is.

Mr. Watkins: The first he introduced was a judgment of not guilty. This one is a certified copy of a nolle prosse. I submit there is an entire difference between a judgment of not guilty and a nolle prosse in that the charges are still outstanding on a nolle prosse and is not a judgment of not guilty.

The Court: I didn't understand counsel to say not guilty. I thought he said nolle prosequi. I didn't understand him to say that.

Mr. Watkins: I understood him to use the expression that the County Court had found Reverend Morris not guilty.

Mr. Rachlin: I didn't say that. May I repeat?

The Court: Yes.

[fol. 247] Mr. Rachlin: In the former question I asked Reverend Morris whether he was present in Court when Judge Moore rendered the decision in the Jones case. Then I asked whether he was present when City Attorney Travis got up in open Court and said, "My evidence in all the other cases is the same as in the Jones case and I move to nolle prosse them all." Then I offered the record, and the record says nolle prosse. Does that clarify it?

Mr. Watkins: Yes.

The Court: Very well.

Mr. Rachlin: I wonder if I may accept your kind suggestion to what I consider my redirect until Mr. Watkins has completed his cross examination?

The Court: Yes. You can reserve your redirect until he completes his cross examination. Do you want to start on another witness this afternoon for fifteen or twenty minutes, or would you rather wait until this witness is complete?

Mr. Rachlin: There might be some confusion running two witnesses at the same time. I have no objection to it, but since we are not going to be able to finish that witness in any respect—.

[fol. 248] The Court: No, I just wondered whether we were going to be able to finish the case tomorrow.

Mr. Rachlin: I hope so.

The Court: Well, we will take a recess until nine o'clock tomorrow morning.

Gentlemen of the Jury, under the instructions I gave you yesterday, separate and be back at nine o'clock tomorrow morning.

(Whereupon the Court recessed until the following morning.)

(Wednesday, May 15, 1963, 9:00 a.m.—the hearing resumed)

Mr. Watkins: Before we resume the cross examination of Reverend Morris, I have been advised that the plaintiffs have served a subpoena on Mayor Thompson for 1:30. He has commitments difficult to break, but we could have him here the first thing in the morning. I don't think we would be completed at that time.

Mr. Rachlin: I have no objection. It would certainly meet my requirement, any time convenient that he has.

The Court: It is apparent we won't be able to finish today, so he can be here at nine o'clock tomorrow morning.

[fol. 249] (Reverend JOHN B. MORRIS resumes the stand for further cross examination)

Cross examination.

By Mr. Watkins:

Q. Before I interrogate you about some of your correspondence I would like to ask you if it is not a fact that as Captain Ray took you and your group out to put you in the paddy wagon on September 13, 1961 that he called your attention to a crowd of people who had followed you out of the waiting room and were following you down toward the point where you were going to get on the paddy wagon?

A. I have no recollection of his pointing out a crowd of people.

Q. I want to ask you if you wrote a communication which is purported to be signed by you to clerical members—.

Mr. Rachlin: Excuse me. I am going to ask that the last question be stricken on the grounds that even under the terms of the question as asked by Mr. Watkins this took place sometime after the arrest was made and therefore can't possibly have any bearing. It is certainly common knowledge that when fifteen people are arrested at one time, even if the facts assumed by the question are true, they are misleading, because when fifteen people are ar- [fol. 250] rested at one time it is inevitable that many people will look, if such were a fact. To make that a point now would certainly give a misleading question to the Jury. The fact here is whether there was a crowd involved prior to the arrest, which was the basis, as the officers say, for this arrest—not what happened afterwards. Even if one person were arrested a crowd might follow. I therefore ask the question be stricken.

The Court: I will overrule the objection until all the testimony is in and I will cover the weight to be accorded or things to be taken into consideration by the Jury in weighing that testimony if it should be permitted to remain in, because at this moment I cannot say definitely whether that is competent or not, but I believe it is true that if there was a crowd anywhere around there then all the facts and circumstances right at the particular moment—even that might have occurred immediately after the arrest, I think would be part of the res gestae and probably is admissible. So I will overrule the objection at this time.

Q. I want to ask you if you can identify this communication purported to be sent by you, dated June 16, 1961, to [fol. 251] clerical members. (Handing to witness)

A. May I look it over?

Q. Yes.

A. Yes, I prepared and circulated this letter to clerical members.

Q. The purpose being to solicit members of your clergy to make the trip with you, the pilgrimage?

A. That is correct.

Q. It states that the pilgrimage will support "those seeking freedom of travel." By that were you referring to the Freedom Riders which were at that time making trips into Jackson, Mississippi?

Mr. Rachlin: I object to the question.

The Court: Overrule the objection.

Mr. Rachlin: As being incompetent and irrelevant.

A. It is exactly as said there. The primary purpose of the trip was to indicate concern for segregation in the church, but it also concerned those seeking freedom of travel, and at that particular time in the history of Mississippi I suspect this might have meant the Freedom Riders or it might be anyone.

Q. Did you have in mind anyone other than Freedom Riders when you wrote that?

[fol. 252] A. Anyone who wished to travel at that time, but we had particularly in mind the Freedom Riders. We make no bones of while we were not Freedom Riders, we support the Freedom Riders. I mean you don't have to pry to get this. I will say this frankly.

Q. Well, it is becoming easier. I can see that.

Mr. Rachlin: I ask that Mr. Watkins' remark be stricken.

The Court: Yes, I will exclude that. Gentlemen of the Jury, you will disregard Mr. Watkins' remark.

Mr. Watkins: I submit for the record that I can demonstrate by this man's deposition, and those of the others, that they have repeatedly denied any connection whatsoever or interest in the Freedom Riders.

The Court: Well, the thing that I was excluding was your remark, the last remark, which was irrelevant.

Q. To what did you refer in the letter of June the 16th when you said, "While present difficulties may have been overcome by September, dangers inherent in the early stages of the pilgrimage must be frankly faced"?

A. As I indicated yesterday, being an interracial group traveling in the South, we know that about half of the population of Mississippi is White and small percentages [fol. 253] of these persons would object to an interracial group, and, therefore, there might be cause for tension among some of the White people who would object to the nature of our group.

Q. In that statement when you use the phrase "present difficulties may have been overcome," weren't you there referring to the Freedom Riders?

A. I was—.

Mr. Rachlin: I want to make sure the Court understood that I have a standing objection to all of these questions.

The Court: Yes, you may have a standing objection, Mr. Rachlin, to all questions of this nature whatsoever, and the objection is overruled and you will not waive the objection by failing to renew it from time to time.

A. Present difficulties may have been overcome—was that the phrase?

Q. Yes.

A. These difficulties were occasioned by the unlawful arrest of countless numbers of persons who were traveling. Most of these persons, I assume, were the Freedom Riders.

Q. Did you anticipate in coming to Jackson that you were [fol. 254] going to do things for which you would be jailed?

A. We anticipated the possibility that anywhere within the South it was a possibility we might be arrested.

Q. In this first letter soliciting members for your group, I will ask you if you did not tell them—and I quote, "No one should apply for the trip unless they are prepared to undergo a period in jail."

A. I said that, and I also said that no martyrs should apply because we did not need anyone who felt he wanted to go to jail.

Q. Didn't you also tell them in that letter, "Only those who are prepared to refuse bail, if this is deemed advisable, should apply"?

Mr. Rachlin: Since we are referring to a specific document, would it be permissible for Mr. Morris to have the document in his hand to make certain that quotations are not taken out of context?

Mr. Watkins: He has read it very carefully.

The Court: I will permit him to have the document at such time as he needs it.

Mr. Watkins: I need some of them for my questions.

The Witness: Suppose I hold it until you need it.

Mr. Watkins: That is perfectly all right.

[fol. 255] Q. Do you remember my last question?

A. The bail factor.

Q. Yes.

A. Would you repeat the question?

Q. Didn't you tell them in the letter only those who are prepared to refuse bail, if this is deemed advisable, should apply?

A. I did.

Q. Who was going to make the decision as to whether it was advisable for them to get out on bail or refuse bail?

A. If this became a necessary consideration for a decision, I expect the group itself was going to make the decision.

Q. Did you anticipate physical violence on your trip to Jackson?

A. I have said that, being perfectly aware of the nature of our group and traveling in the South, we were not naive about the fact that some of the White citizens object to interracial groups, so we anticipated the possibility of violence anywhere directed toward us, but at no point had we any desire for this and we genuinely hoped that it would be avoided, and, of course, there was not.

Q. In that same letter you told the prospective applicants, "Anyone having any doubt he could be constrained from returning blows in the face of physical violence should not consider going."

[fol. 256] A. Exactly.

Q. On the trip did each member of the group use his own judgment or was he bound by decisions of one or more in charge of that group?

A. His own judgment with regard to what?

Q. Decisions as to what he would do on different contingencies that might arise during the course of the trip.

A. The group, in terms of plans that pertained to the entire group, made decision as a group. If somebody wanted to brush their teeth, that was their own decision.

Q. Didn't you have a steering committee that made the decisions?

A. We did not. We thought we might, and it is stated in here we would.

Q. You stated in the letter you would?

A. We did. This was before the occasion.

Q. When you stated in that letter, "While in transit, individual judgment on strategy and itinerary will be welcomed, but a final determination will be made by a steering committee," what did you mean by decisions on strategy?

A. Strategy, where we would go, when, and how long we would stay when we went. For instance, going to All Saints College in Vicksburg how long to stay and what was our timetable that day.

[fol. 257] Q. You don't consider strategy a military term?

A. I used the phrase in here that we would move in a disciplinary group like a military operation, and it is a Christian tradition to be a disciplined group.

Q. I was talking about the word "strategy." Don't you consider that a military term?

A. I consider it a good Christian term.

Q. You weren't using it in a military sense?

A. We were not a military group, so, if you see some connection, we were seeking to be disciplined as like a military group.

Q. And you so stated in that letter, didn't you?

A. Yes.

Q. Was your trip planned for any illegal purpose?

A. Was our trip—.

Mr. Rachlin: I didn't hear.

(The last question was read by the reporter)

Mr. Rachlin: I wonder if Mr. Watkins would spell that out, because it assumes the witness is aware of all the possibilities of legality or illegality, and I think the question should be phrased in the terms of specific terms of illegality. Was he suggesting they were going to commit perjury, or rape, or talking about something in par- [fol. 258] ticular?

Mr. Watkins: Maybe this will clear it up for you and Mr. Rachlin.

Mr. Rachlin: Thank you.

Q. What do you mean in the letter when you stated, "It is hoped that those participating will be able to remain at convention through September 20th for the society-sponsored dinner," and continuing, "It is more than humor, however, to suggest that your meal that night could be one served in some county jail"? Why were you telling your applicants that instead of attending a proposed dinner at the church convention on September the 20th, they could very well be eating supper in a county jail, unless you intended some illegal action?

A. Are you reading from the letter of June 16?

Q. Yes.

A. Can you refer me to the place in here?

Q. Yes, I think I can. I refer you to the third paragraph of the second page.

A. Again, this is no more than I have already said, that is, that we were aware of the possibilities of being arrested because we were an interracial group, but we had, as is indicated in all these documents, a continuing hope that [fol. 259] this would not happen. We hoped in this instance for all to be on hand for a dinner, an occasion we had sponsored in Detroit, with the Archbishop of Capetown, South Africa, speaking, in which we had invested a considerable amount of time and planning and wished to be there, all of us.

Q. On the date of that letter, who did you consider the "front line fighters in the field of civil rights"?

A. The date of this letter, the front line fighters in the field—.

Mr. Rachlin: Your Honor, what difference does it make what he considered as a front line fighter for civil rights?

The Court: Are you objecting?

Mr. Rachlin: I am.

The Court: Objection overruled.

A. At that particular point the front lines in Mississippi were being manned chiefly by the Freedom Riders. There were many front lines, all over the place. Mr. Watkins, you really didn't have to get this to know the nature of our trip. In the statement we had here yesterday we clearly stated we hoped to make the trip on through, but we could not enjoy the luxuries of being separated racially as we [fol. 260] went. I can't quote it exactly, but therein is caught up the substance of this religious pilgrimage, which refused to be divided racially, yet was not unaware of the situation we faced.

Q. Doesn't the third page of that letter contain this statement:

"These are times when the church must launch out into bold, new ways to cleanse itself of marks of caste and class, and lend its support for front line fighters in the field of civil rights"? Now, my question is your reference to the front line fighters in the field of civil rights was to the Freedom Riders.

Mr. Rachlin: The question is improper. I think the document speaks for itself. Either it says or doesn't.

The Court: Overrule the objection.

A. You are reading a concluding generalized paragraph there, where I am saying that the church must launch out in bold, new ways in Washington State and Florida and New York and Boston. I have not denied we would consider front line fighters in Mississippi to be the Freedom Riders, which we were supporting although we were not Freedom Riders. I object to your narrow interpretation of the general statement that the church must be [fol. 261] rising up to face the opportunities and challenges in all times and places, as if this were the only thing at stake.

Q. All I am asking you is what you mean by that language and did you mean the Freedom Riders.

A. Among others. Freedom Riders then in Mississippi and Alabama.

Q. Even at the time you wrote this first letter of June 16, 1961, you had some doubts in your mind as to the wisdom of this proposed project?

A. I did.

Q. And you expressed those doubts in this letter, didn't you?

A. I believe I did make some reference thereto.

Q. Follow me as I read. "Some of you may be disturbed at the proposals set forth here, while others will chide me for even debating its advisability. I take full responsibility for the decision to proceed. Having weighed everything carefully and consulted with many persons, I am convinced that this should be ventured. We do not know now the final wisdom of the matter." That is your statement, isn't it?

A. It is.

Offer in Evidence

Mr. Watkins: I now offer in evidence a letter that has been identified as dated June 16th 1961.

[fol. 262] The Court: Let Mr. Rachlin see it.

Mr. Rachlin: Thank you, Your Honor. You anticipated my request. Your Honor, I object. I enjoyed reading the document. I am sure Mr. Morris will stand by every word he says, but I must object on the ground it is irrelevant, incompetent and immaterial and prejudicial.

The Court: Overrule the objection. Let it be received and marked as an exhibit.

(Same was received and marked as Defendant's Exhibit No. 2, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S #2

Witness MORRIS

May 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200, 5 Forsyth Street, N.W.,
Atlanta 3, Georgia. Jackson 5-7975

June 16, 1961

RE: *Prayer Pilgrimage from New Orleans to General Convention*

TO CLERICAL MEMBERS:

On Tuesday, September 12, 1961, a bus carrying 37 Episcopal clergymen will leave from New Orleans on a "Prayer Pilgrimage" to Church and Church-related educational institutions between that city and Detroit where the General Convention opens on September 17th. This is to invite [fol. 263] you to consider making application to accompany this group on what may be a trip of momentous significance.

Purpose:

Aware of our own needs within the Church, the primary thrust of such a tour will be to show concern that Church sponsored institutions should have no restrictions based on race. However, through announcement within the week and by actual presence at the time, the pilgrimage will indicate support of those presently seeking freedom of travel, with access to normal facilities connected with interstate travel. Any ruling by the I.C.C. will need opportunities for demonstration of the effectiveness of its implementation. Whatever the resolution of the present struggle regarding interstate travel, there will be a continuing need within the Church. With the final focus being the General Convention, we will be indicating our hope that the Church in all regions may show greater leadership in setting in order its own household as well as in providing guidance for the community at large.

An itinerary is being prepared. It will include secondary schools and colleges operated by the Church in both the North and South. At our stops we will give thanks for those places that have no barriers, penitently admitting our own involvement in the sinful system of separation and segregation at so many levels. At institutions still closed to some because of race, we will pray that both a concern as well as a capacity to proceed might prevail in each case. [fol. 264] We will pray for national unity, and for a fuller utilization of the climate in the North that should permit even greater steps by the Church in righting the wrongs in its life. With Convention as our terminal point, we will pray that the Church in all areas may come alive to its opportunities and responsibilities.

Participants and Their Selection:

Participants should arrive in New Orleans by late afternoon on September 11th in time for a period of preparation before departure the next day. The bus will be chartered so as to permit visitations enroute and a flexibility of schedule. We will use regular terminal facilities for meals. In all likelihood, we would not stop for the evening until reaching Tennessee, which means one or two nights in transit at the outset.

While present difficulties may have been overcome by September, dangers inherent in the early stages of the pilgrimage must be frankly faced. No one should apply for the trip unless they are prepared to undergo a period in jail if this develops through efforts to utilize terminal facilities in a normal fashion. Only those who are prepared to refuse bail, if this is deemed advisable, should apply. We trust and hope that we will go safely on our way, but alternatives must be faced. Anyone desiring a martyr role for himself should not apply. Anyone having any doubt he could be constrained from returning blows in the face of physical violence should not consider going.

[fol. 265] To Clerical Members Page Two June 16, 1961

The selection of participants for the pilgrimage will be done here. We will endeavor to have a balance of white and Negro priests, as well as some of other backgrounds. As high a proportion of Southerners as possible will be selected. Subjective factors will be weighed and I shall consult with others to obtain a tightly coordinated and carefully screened group. You are encouraged to discuss this with other clergy who might like to accompany you. The pilgrimage is not limited to members of the Society, but to any Episcopal clergymen. The reason for this criteria instead of something more ecumenical is to make the impact within the Church more significant, and due to the nature of the institutions to be visited and the destination. It is anticipated that groups of clergy of other churches will make similar tours before or after ours.

While in transit, individual judgment on strategy and itinerary will be welcomed, but a final determination will be made by a steering committee. It must be understood that the entire venture will be subject to cancellation up until the last minute. The act of making application will be understood as a willingness to forego plans if this is deemed advisable. In every regard, we must have a discipline akin to that in a military operation.

Financial Arrangements for Participants:

We will pay for the bus and for any overnight accommo- [fol. 266] dations for the group during the pilgrimage. Participants are to pray for their meals while on the pilgrimage. We will also allow up to $75 for expenses in getting to New Orleans, in excess of $25. Disbursement in most cases would be made after Convention upon receipt of an accounting of travel costs to New Orleans. The Society will not be responsible for any expenses while in Detroit or for travel home. It is hoped that those participating will be able to remain at Convention through September 20th for the Society-sponsored dinner. It is more than humor, however, to suggest that the meal that night could be one served in some county jail!

Special Funds to be Raised:

We must raise funds to cover costs to be borne centrally. Your help with this is urged. Your own contribution, if you are not able to apply, will be welcomed and it is hoped you can secure assistance from concerned laymen. Please make such contacts yourself in our behalf, as we are already swamped here. It is estimated that expenses for the group, apart from individual expenditures, will come to about $5,000. If you want to apply for the trip and are unable to muster funds you will need personally, it is suggested that you seek assistance from friends. Demands here will not permit assistance beyond covering the costs mentioned.

In General:

More detailed briefings will be sent to those accepted for [fol. 267] the pilgrimage. I can understand that some interested in going will be unable to do so. I hope all will carefully consider the possibility. Please write me as soon as possible, using the form below and the enclosed envelope. We hope to have participants who can make the entire trip. Anyone only able to go part of the way may register this and we will see what the possibilities are.

To Clerical Members Page Three June 16, 1961

These are times when the Church must launch out into bold new ways to cleanse itself of marks of caste and class, and in its support for front line fighters in the field of civil rights. Some of you may be disturbed at the proposal set forth here, while others will chide me for even debating its advisability. I take full responsibility for the decision to proceed. Having weighed everything carefully and consulted with many persons, I am convinced that this should be ventured. We do not know now the final wisdom of the matter. We may pray that such a pilgrimage will be for the greater glory of Christ Jesus in this awakening era of concern among both those who call Him Lord and those who do not. Of which will it be said: "Well done thou good and faithful servant. . . . "when assessment is made for the sources of changes so long needed?"

Yours faithfully,

(Rev.) John B. Morris
Executive Director

JBM:jlw

[fol. 268] Cross examination (Continued).

Q. I hand you what purports to be a copy of a communication of yours of June 28th 1961, to the applicants for the pilgrimage and ask you to identify it.

Mr. Rachlin: I couldn't hear Mr. Watkins.

Mr. Watkins: A letter of June the 28th 1961 to the applicants.

A. Yes, this is my letter of June the 28th.

Q. That letter indicates, does it not, Reverend Morris, that there was a relation between your trip and the Freedom Rides?

A. I have indicated earlier we were supportive of the Freedom Riders.

Q. And you so show in that letter that you realize that your group would be considered as "another or the last of the rides."

A. I stated that it was possible in all likelihood we might be viewed in this fashion. We have made every effort in all our documents seeking to interpret our pilgrimage within the Episcopal Church for its religious and primary trust to the church, but whatever people, whether Redbook Magazine or others, may make of our trip we cannot be totally responsible.

Q. At the time of that letter of June 28th 1961, had you [fol. 269] discussed the plans of your pilgrimage with Martin Luther King, Jr.?

Mr. Rachlin: I object to the question as being solely for the purpose of prejudice and having no useful purpose whatsoever.

The Court: Overrule the objection.

Mr. Rachlin: Thank you.

A. I had.

Q. Was it understood that he would issue a statement in support of your plans?

A. He did issue a statement.

Q. My question was did you have an understanding with him in advance that he would issue a statement in support?

A. I had such an understanding before he actually issued it, yes.

Q. That was my question.

A. How many days before, I don't know.

Mr. Rachlin: May I interrupt? I don't recognize the mayor, but I think he is seated with us and I wonder if we could do the mayor a great favor by asking him to testify now, and it wouldn't be necessary for him to come back on some other occasion. I would be honored if we could interrupt the testimony of Reverend Morris.

[fol. 270] Mr. Watkins: That would depend upon the mayor's plans. I do not know, but I will find out.

(After conference)

Mr. Watkins: We are willing to give up the cross examination of this witness by Mr. Rachlin to put the mayor on the witness stand.

The Court: Very well, be sworn.

(Whereupon the witness was sworn)

The Court: By consent of the parties to the lawsuit, the cross examination of the witness now on the stand, it is agreed, will be terminated for the time being in order that Mayor Thompson may now be called as a witness and testify at the request of the plaintiffs. Take the stand.

Mr. Rachlin: May the record show that the plaintiffs appreciate Mr. Thompson coming here at this time and interrupting a very busy schedule in a big city and committing himself in this action presently being heard before the Court.

The Court: Very well. *you* may so state on the record.

Allen Thompson, called as a witness and having been first duly sworn, testified as follows:

[fol. 271] Direct examination.

By Mr. Rachlin:

Q. I wonder if you could tell us how long you have been mayor of the City of Jackson?

A. About fifteen years—almost all my life.

Q. And you are a very successful politician?

A. Yes.

Q. Where I come from, we don't have them last that long. Now, as part of your functions as mayor, do you have any direct authority over the police department?

A. I have real authority over every department and everyone of the 1700 employees, but we have a mayor and commission from of government, which delegates to the different department heads operation of their departments, and really the only authority that I have as mayor is to instruct my police department to uphold the law and to prevent violence.

Q. Thank you. Now, you say you have a commission form of government in Jackson?

A. Yes.

Q. Were you ex-officio commissioner of the department of police?

A. No, sir. The police department is one of the ones which is under my—although they are all under my direct [fol. 272] supervision. There is no way, really, to explain it, sir, except that I work mostly with everyone of them, but I do a great deal of delegation of authority.

Q. Now, Mr. Mayor, in your capacity as mayor, did you appoint the defendant in this proceeding, James Spencer, to be an ex-officio justice of the peace?

A. With the approval of the commission.

Q. Is there a special term of office for that position?

A. No, sir, he's just appointed to serve, probably as long as I'm mayor,

Q. Does the same appointive power have the authority to remove him from office or appoint someone to succeed him in office?

A. Only for good reason. Now, you take, we have had just two or three police justices in my memory, and I've lived here all my life. Many times decisions are made which are different from what I believe, but I have never yet asked the judge to make any decision; I've never commented on any decision he has made; he is never required to make any decision that's satisfactory to me.

Q. I understand that. Don't think I was suggesting otherwise. What I wanted to ascertain: Does the appointive—the same body who appointed the justice of peace at [fol. 273] least have the authority to remove him for cause?

A. If there would be any cause and if I would want to, over a period of time it could be done.

Q. Thank you. Now, one or two more questions.

A. Yes, sir.

Q. Has it been the policy of the City of Jackson to maintain segregation of the races?

A. You know, we never thought about that until this trouble came along. We have lived side by side here for a hundred years. We go ahead and operate just everybody makes a good living. We don't think about any policy. But, as a matter of fact, the separation of the races has been voluntary here for years and years. We haven't used any ordinance or any authority along that line that I know of—and as I said, I've been mayor for a long time, and I was a lawyer here for a long time before I got into this job. But the separation of the races in Jackson has proved tremendously successful. People have been happy. They make good livings. We get along well. And to show you how much the people in this city believe in it, when I was thinking about getting out of politics and getting into an honest living about two years ago, I had a great many petitioners from my colored friends, PTA, church members, [fol. 274] Boy Scout folks, asking me to go along because they approved of—not my policy, but the policy set up over the years, of a separation of the races.

Q. Now, you have just mentioned that this policy is voluntary. Now, the Continental Trailways bus station is a few blocks from your office, isn't it?

A. Two or three.

Q. Yes. Now, were you aware, Mr. Mayor, that on September 13, 1961, and for some time prior to that and subsequent to that, there was a sign in front of the Continental Trailways bus station which said "White Waiting Room Only, By Order of the Police Department"?

A. That used to be the thing that has come up over the years. You will notice now it is just "White" if you want to, "Colored" if you want to.

Q. At that time, it said "By Order of the Police Department," didn't it?

A. That's right. That's all a matter of record.

Q. Do you think that that indicates a voluntary separation of the races when you say "By Order of the Police Department"?

A. It is something that has just come up, as I said, over the years; just been a policy.

[fol. 275] Q. You would not consider that then, I take it, an instruction to the police department to keep people who were not white out of that waiting room?

A. Well, it's very similar to the way things go along and change. You take when I was in New York many years ago, they had the same things. When I was in Washington. But, of course, now things are completely different. And it's because of the change in rulings, the change in court procedures, the change in everything else.

Q. Your Honor, when you were in New York, did you ever see a sign which said "White Only, By Order of the Police Department"?

A. No, but when I was there 25 or 30 years ago, that was the law.

Q. No doubt about it. Now, you don't think then that anybody reading that sign would feel that he was ordered, if he wasn't white, to stay out of that waiting room?

A. In all probability. But people just didn't—the local people and the Mississippi people really didn't even think about it. Like today, after those signs are removed, go anywhere they want. It's only when our outside friends who wanted to come down and try to correct our happy and pleasant city came in and tried to change what we were doing; only then was attention called to that. Frankly, [fol. 276] I believe that you will agree in your wisdom that what was done at that time, of course, I had nothing much to do with it. I'm more or less of an administrator there leaving the actual work to other people, but I think that you will see that what was done at that time we were lucky in it in a way, we were wise, but I believe that we had more of a real feeling on it and had more or less divine guidance in that if that had not been done we could have had some of the serious troubles that they had in Washington when they had the football game and all of these Negroes ran across and attacked all of these white people and they had a tremendous race riot, and in some of these other cities where you didn't stop all the real ground for disturbance right at the first.

Q. Well, Your Honor, if you will permit me, you have been a lawyer for many years, I take it. I don't mean to cast aspersions, but how long have you been a member of the bar in Mississippi?

A. Since 1931.

Q. And you know, of course, that on June 13, 1961, there was a Mississippi statute which required by law that there be two waiting *rOoms,* one for white and one for colored, in every bus station in Mississippi?

[fol. 277] A. To be honest, I had never practiced that part of the law.

Q. But as the mayor of the city, you must have been aware of the existence of such.

A. I'm sure you people have called that to my attention many times since, but I never thought about it until my friends from the outside came down.

Q. Were you personally aware of that sign which said "White Waiting Room Only, By Order of the Police Department"?

A. That's a funny thing. I don't ever remember really ever actually seeing it, going about my business, anymore than I would a telephone post.

Q. The sign is different now?

A. Oh, yes. When the court said "Take that 'by order of the Police' off," we took it off.

Q. There's an order now to take the sign down completely, isn't there?

A. Is it?

Q. Well, didn't the court—

A. Well, it will come down in a minute if it is.

Mr. Rachlin: I have no further questions. I want to thank the Mayor for giving us his time, and I give the witness to Mr. Watkins.

[fol. 278] Mr. Watkins: I don't care to cross examine the Mayor. I have tried that before.

(Witness excused)

John B. Morris, recalled as a witness and having previously been sworn, testified as follows:

Cross examination resumed.

By Mr. Watkins:

Q. We were talking about your communication to applicants of June 28, 1961, I believe.

Mr. Rachlin: I wasn't able to hear.

(Question was repeated)

Q. Were any persons other than Episcopal clergymen considered for the trip?
A. No.
Q. What is an organization known as the Living Church?
A. It is a weekly publication for Episcopalians, a news publication and journal of thought and opinion.
Q. Wasn't it contemplated that they would send a representative along with the/pilgrimage?
A. This was a possibility.
Q. Wasn't it contemplated that one or more national [fol. 279] publications would be represented on the pilgrimage?
A. This was this possibility.
Q. And you so stated in that communication?
A. I believe I did. I did in some.
Q. Fourth paragraph?
A. Yes.

Offers in Evidence

Mr. Watkins: We offer in evidence this communication of June 28, 1961, from Reverend Morris to the applicants.
The Court: Let it be marked and received in evidence.
Mr. Rachlin: I'd like to see it.
The Court: Oh, excuse me.

(Same is handed to counsel opposite)

Mr. Watkins: To save time on this, may I ask the Reverend to be reading the next one?

Mr. Rachlin: I have already indicated my objection to this document, Your Honor.

The Court: Well, overrule the objection.

(Same was received in evidence and marked as Defendant's Exhibit No. 3, which Exhibit follows here below:

[fol. 280] EXHIBIT DEFENDANT'S No. 3

WITNESS MORRIS

May 15, 1963

The Episcopal Society for Cultural and Racial Unity
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia
Jackson 5-7975

To Applicants for the Prayer Pilgrimage:

This is to acknowledge receipt of your application to go on the pilgrimage outlined in my letter of June 16th. Forgive this impersonal reply. I am sure that you have more than a little at stake in making your decision about this and I am gratified to hear from you.

I will have to wait until early August to designate those of the applicants who will be accepted to fill out the complement of thirty-seven. I realize that you will need to know as soon as possible whether you will make the trip and I will do everything I can to line it up as soon as possible. A mailing goes in early July to all clergy announcing plans and inviting applications and we will want to have had time for some response to this. I should certainly give priority to Society members ordinarily.

As indicated in the original letter the entire plan must be subject to cancellation up until the last moment. I am keeping as closely in touch with the situation as I can so that we may be adequately advised what the best course of action is to the extent that our pilgrimage relates to the Freedom Rides. My feeling is that our primary thrust [fol. 281] being Church institutions and the general convention gives our plan a validity that will warrant following through regardless of what is done on the Rides. However, while we may see the basic goals and concerns, our pilgrimage will in all likelihood be viewed as another or the last of the Rides.

I am writing this letter on June 28th, the day before a statement in support of our plans is due to come from Martin Luther King, Jr. At this time, also, I am waiting to hear whether several prominent clergy will be able to go with us . . . there is a good chance they will. The statement from Dr. King and the presence of these particular clergy will be a help. You might also want to know that THE LIVING CHURCH has indicated they might send someone with us, and it is probable that several national publications will be represented.

We do need more applicants, but I am aware of the fact that my letter went out only ten days ago and I believe they will be forthcoming. Please speak with clerical friends about this. I am enclosing several copies of the original letter and application forms. Also, I am sure you will want me to share quite frankly with you my concern for securing the necessary finances. By mid-July I should know what prospects are, for I have a good many letters out on this. Your decision to go on the pilgrimage certainly exempts you from a primary concern here, but any contacts with interested laity will be welcomed and needed!

[fol.282] (OVER)

So much for procedural matters. Let me tell you know what the tentative itinerary is, asking that you not publicize this until after I have. In order of visitation the towns where there are Episcopal institutions we would visit are: New Orleans, Vicksburg, Jackson, Birmingham, Sewanee, Versailles (Ky.), Cincinnati, Gambier, with Detroit as the terminal point. You will know in each case the schools involved, except that in Jackson and Birmingham we would probably not be involved in any institutions. With apologies for contrived aliteration, tea in the terminal at Jackson will be in order after the end of our first day. An overnight drive to Birmingham would see us there for some parish's early celebration on Wednesday. Our primary stopover would be Sewanee and we would hope to stay at the Sewanee Inn which is owned by the university but has previously refused service to Negroes or mixed groups. The approach as outlined in the June 16th letter would prevail—offering prayers at each place, of either intercession or thanksgiving, or both!

We would have one or two of our *numeber* designated as chaplain(s), with the responsibility of directing our meditations and prayers in transit so that we be kept turned to our chief object of devotion—Our Lord Jesus Christ—notwithstanding the provocations of others. Possibly we would have prepared for the pilgrimage a series of special [fol. 283] litanies—for the nation, for the Church, for its schools, for those who would deter us or harass us, etc. Obviously you will want to bring a hymnal and prayer book and we will make ample corporate use of them . . . but more later on what to bring.

The Greyhound company is prepared to charter a bus for us. If the funds are not found it may be necessary to take regularly scheduled runs, although this would not suit the visitations of campuses and churches enroute very well. Even then we must have considerable funding . . . but that is my problem now.

Let me have any second thoughts, ideas about what we should do, etc. I am looking forward eagerly to the opportunity to be with the pilgrimage and to get to know you better.

More later.

Faithfully,

(Rev.) John B. Morris
Executive Director

Mr. Rachlin: In an effort to speed up proceedings this morning, might it be advisable for me to suggest that in view of Your Honor's rulings on two of these documents that Mr. Watkins offer them all as either single exhibits or as a group—whichever he chooses—and you note my objection, and we might be able to proceed faster.

[fol. 284] Mr. Watkins: It's perfectly all right with me. It does not eliminate the question about asking the witness about it.

A. This is a letter to clerical members, of June 20, 1961.

Q. Does that letter to your members indicate that Martin Luther King, Jr., had issued this statement?

A. It quotes it.

Q. And under what date did Martin Luther King issue his statement?

A. Apparently on the same day as this letter, June 30th.

Q. That is what you say in that letter, isn't it?

A. Yes.

Q. Did you see the statement before it was issued?

A. No, I got a copy of the press release that his office issued that same day.

Q. Where was the statement issued?

A. The statement was issued by his office, to the best of my knowledge, the Southern Christian Leadership Conference.

Q. Where is that?

A. In Atlanta.

Q. And you received it on the same day?

A. I received it after it had been issued the same day. I [fol. 285] don't that it—might have been issued a day or two before with a date line for June 30th. I don't remember.

Q. That communication, Reverend, referred to your trip as implementing the spirit of the Freedom Rides. Is that correct?

A. That's correct.

Q. Did you publicize that statement?

A. I did not publicize it except to quote it here. It went out from Dr. King's own organization. I did not review the statement in advance of its preparation. I received a copy and reported it to our clerical members here.

Q. What do you mean in that statement when you told members to "beware of our general tendency to side with caution rather than boldness."

A. Now, you're not referring to Dr. King's statement, are you?

Q. No. A later statement, toward the last.

A. What paragraph?

Q. (Indicates)

A. What did I mean by "beware of our general tendency to side with caution rather than boldness"?

Q. Yes.

A. I would have to read the rest of that paragraph, if I may.

Q. All right.

[fol. 286] A. (Reading) "I hope you will consider applying for the Pilgrimage. At the same time, let me repeat my appreciation of the fact that there will be some who would like to go but cannot because of circumstances surrounding their situation. Each must be the judge of this. Be responsible. Also, beware of our general tendency to side with caution rather than boldness. I shall not judge the merits of anyone's decision."

Well, I don't know that I can explain that descriptive part any better than it speaks for itself. I believe most of us tend to make decisions that are more cautious than they are bold if we're given an alternative about something. The instincts of self-preservation and self-protection.

Q. That was urging the membership to be more bold and militant in this move, wasn't it?

A. Yes.

Mr. Watkins: We offer that in evidence as an exhibit to the testimony.

The Court: Let it be received in evidence and marked. Let Mr. Rachlin see it.

(Same handed to Mr. Rachlin)

Mr. Rachlin: Same objection.

[fol. 287] The Court: Overrule the objection.

(Same received in evidence and marked as Defendant's Exhibit No. 4, which Exhibit follows here below:)

EXHIBIT DEFENDANT No. 4

WITNESS MORRIS

May 15, 1963

The Episcopal Society for Cultural and Racial Unity
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia
Jackson 4-7975

June 30, 1961

To Clerical Members:

This is a second and final memorandum regarding the Prayer Pilgrimage. A copy of my previous letter of June 16th is enclosed, together with the form for making application or contributing.

The Rev. C. Kilmer Myers, Vicar, Chapel of the intercession, New York City, ("Light the Dark Streets"), will serve as Chaplain on the Pilgrimage. In this capacity he will direct our thoughts and prayers toward primary commitments, and seek to keep us humble, forgiving and serene.

The Rev. Martin Luther King, Jr., said in a statement today: "The Episcopal clergymen who will ride on this pilgrimage, using terminal facilities at the bus stations enroute, will implement the spirit of the Freedom Rides fully since they will use restroom, eating and other facilities without regard to race. The misguided opinions of [fol. 288] those who urge stopping the Freedom Rides because they challenge the unjust system of segregation and expose the breaking of Federal laws by merchants and officials in the South, will be shown against the absolute necessity to continue the challenge if customs, practices, people and institutions are to be changed to conform to democratic and moral principles."

It is too early to know just how many applicants we will have from which to select the thirty-seven participants, but as of this writing we need more. It is likely that, in addition to white and Negro clergy, we will have Japanese, Chinese, Puerto Rican, and American Indian backgrounds represented. The richness of our own tradition will be shown and certainly the many faces of America will be dramatically portrayed!

As previously indicated, our primary concern will be with Church schools and colleges. Our secondary level of witness in the South is directed toward interstate travel. Dearborn, Michigan has just been in the news in connection with its restrictive housing practices and I have asked the Mayor of that city if we might make Dearborn our last stop to learn what the churches and others in Dearborn are doing to encourage open occupancy in housing. Perhaps this will adequately show our concern with problems in all regions.

I hope you will consider applying for the Pilgrimage. At [fol. 289] the same time, let me repeat my appreciation of that fact that there will be some who would like to go but cannot because of circumstances surrounding their situation. Each must be the judge of this. Be responsible. Also, beware of our general tendency to side with caution rather than boldness. I shall not judge the merits of anyone's decision.

Those who can't go *can* help. We desperately need funds to see us through. Personally, from discretionary sources, but moreso—please speak in our behalf with concerned lay persons. Lots of small contributions will strengthen the Pilgrimage, but it will take a number of quite substantial gifts to allow us to carry through with plans. Your vigorous efforts here will be appreciated and, indeed, upon them may well hang the implementation of the venture.

Faithfully,

/s/ John B. Morris
(Rev.) John B. Morris
Executive Director

Q. I have handed you a letter dated July—, 1961, to the clergy from you, have I not?

A. That's correct.

Q. In that letter—and I'm referring specifically to the fifth paragraph of the letter—you continue to stress the necessity for a militant spirit among your group, with [fol. 290] reference to the pilgrimage, don't you?

A. That's correct. Militancy is an ancient Christian virtue, perhaps reflected in the song "Onward Christian Soldiers," if one is militant for Christ's sake and not for something else.

Mr. Watkins: Would you care to see that?

(Hands to counsel opposite)

Mr. Rachlin: Objection.

Mr. Watkins: We offer the communication of July, 1961, in evidence.

The Court: Objection is overruled. Let the document be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Defendant's Exhibit No. 5, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S No. 5

WITNESS MORRIS

May 15, 1963

The Episcopal Society for Cultural and Racial Unity
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia
Jackson 5-7975

July—1961

To the Clergy:

Attached is a letter I directed last month to clerical members of the Society in which plans for a Prayer Pilgrimage were outlined. Although it's mid-summer, the weather may be warm, and you may be on or headed for [fol. 291] vacation, please give this your careful consideration. It could speak profoundly to the Church and the nation, and it could be a significant milestone in your life and ministry if you will come with us.

Our Chaplain for the pilgrimage will be the Rev. C. Kilmer Myers (*Light The Dark Streets*) of New York, whose task it will be to help us remain humble and forgiving as thoughts and prayers are directed toward primary commitments. Will you join your prayers to ours in a litany for the wholeness of Christ's Church and for dedication in meeting the needs in all regions of the country? Will you help to light the dark recesses of America and keep the Church abreast of this era of accelerating change? Will you come with us?

The steps required to personally accept a role of responsible militancy are difficult and I realize that some wanting to take them are not able to join us in the pilgrimage for reasons connected with their situation. There are other ways for these to help and vicariously go up to General Convention. Your prayers as we go are asked. Your help financially is needed—and it will be greatly appreciated if you would seek contributions in our behalf from concerned laity.

More than even your presence on the pilgrimage, however, we want—for Christ and His Church—your commitment to the Church's teaching which we have simply reiterated in the Society's Statement of Purpose. We hope [fol. 292] you will want to express this commitment partly through membership in the Society. An application form is enclosed. We need you and, if the testimony of many is so, there is a mutually sustaining and committing benefit through sharing in this fellowship of concerned churchmen. As a member, you will receive our newsletters and various other materials similar to the enclosed reprint.

If a description of the Society's approach to things is sought, I hope it will be said that it is our concern to encourage *responsible militancy* within the Church in the implementation of its inclusive nature without regard to caste or class. Ultimate goals in all places are the same, although we have an appreciation of how immediate needs may vary. Let men commit themselves and determine what this means in terms of the problems and opportunities facing them in their respective situations. Perhaps we can help more and more churchmen to take the bolder step rather than the cautious one more usually ventured.

You can help us in this by providing your people with an opportunity to learn about the Society and it is for this purpose that I am sending you a poster I hope you will find useful. We will furnish copies of the Statement of Purpose for your parish mailing if you want.

[fol. 293] Finally, if you are to be at General Convention and whether you are a member or not, or go by bus or plane, the flyer on our dinner at the Statler Hotel announces the opportunity to hear the Archbishop of Capetown who will be our guest at Convention. If you are there, I will hope to have an opportunity to talk with you and, in the meantime, I welcome hearing from you about all of these matters.

Faithfully yours,

/s/ John B. Morris
(Rev.) John B. Morris
Executive Director

To:

The Rev. John B. Morris
Room 200
5 Forsyth Street, N. W.
Atlanta 3, Georgia

Date..................

Check if Applicable:

☐ In accordance with plans outlined in your letter of June 16th, I would like to apply to go on the PRAYER PILGRIMAGE from New Orleans to Detroit, September 12-16, 1961.

SIGNED: ....

☐ I will not be able to accompany the pilgrimage for the entire tour, but could give .... days. (Indicate preferable dates.)

☐ I want to apply for the pilgrimage but am unable to to secure funds to cover my personal expenses.

☐ I am unable to go on any of the pilgrimage but enclose my check for $............ to help with expenses, or am willing to pledge $............ toward expenses which I will send .... (date).

[fol. 294]

☐ I am able to go and can contribute toward the central expenses and enclose my check for $............ or pledge $............ which I will send .... (date).

☐ I have talked with the following priests who are interested in going. (Please list with addresses and phone numbers.)

....

(Checks may be made payable to ESCRU.)

Name: ....

(Please type or print)

Address: ....

City: .... **State:** ....

Telephone Number: ....

Parish: .... **Position:** ....

(A letter dated June 16, 1961 not copied here because it appears in the record on page 176.)

•••

Q. I hand you a letter dated August 4, 1961, from you to the pilgrimage applicants.

A. That is correct.

Q. At that time in August 1961, you were having difficulty getting as many as you wanted to make the trip, weren't you?

A. We had space for 37.

Q. At that time you had 21, didn't you?

[fol. 295] A. 22, it indicates here.

Q. All right. You were disappointed also because only six of them were Negroes, weren't you?

A. I believe I did reflect some such feeling.

Q. Was financial help then offered to your group by the organization headed by Martin Luther King, Jr., the Southern Christian Leadership Conference?

Mr. Rachlin: Object to this question.

The Court: Overrule the objection.

A. Offer financial help for what purpose?

Q. For the purpose of the pilgrimage. That's all I'm talking to you about.

A. I would have to review the letter to refresh my memory but to the best of my recollection, we were receiving funds for the cost of the pilgrimage from all over, and chiefly from within the Episcopal Church. We did discuss with Mr. Walker the question of if there should be occasion for needing bail funds would there be any possibility of assistance from his organization.

Q. Who is Mr. Walker?

A. Mr. Wyatt Walker is the Executive Director of the Southern Christian Leadership Conference.

Q. Read with me on the first page of this letter:

[fol. 296] "The Southern Christian Leadership Conference has said they could probably help on these basic expenses if it is necessary. This is the organization headed by Dr. Martin Luther King, Jr., who came out publicly in support of our plans the end of June as you have seen in my letter of June 30th to clerical members."

Was that financial assistance that was made available to you?

A. No, it was not.

Q. You also considered changing your starting point from New Orleans to Jackson, didn't you?

A. We did at one point. I say, I did. I don't know if it was ever thoroughly considered.

Mr. Rachlin: Your Honor, this, of course, is irrelevant. What difference does it make what was considered? We are only considering what was done and what happened and not mental processes of the witness. I move that it be stricken.

The Court: Overrule the motion and the objection.

Q. You contemplated on that, didn't you, the possibility of moving it from New Orleans to Jackson as a starting point?

A. I noted it at some point.

Q. If you will look at the third page, please.

[fol. 297] A. "At the starting point, whether New Orleans or Jackson." Yes.

Q. You also told them in that letter that Dr. Wyatt T. Walker was to direct your preparations connected with non-violent discipline, didn't you?

A. That's correct.

Q. Is that the workshop that we have talked about before that was held in New Orleans the night of the 11th of September?

A. We readily indicated in our depositions that Mr. Walker had considered with us non-violent discipline in the context of an evening session where we spent a much greater amount of time in our own deliberations chiefly in preparation of the message to the general convention in Detroit, that you introduced yesterday in evidence. Therefore, we would not refer to our evening's meeting as a workshop because this was an incidental part of the purpose of the meeting. He did direct us in our session though in non-violent discipline. It's a question here of whether you are going to describe the whole evening as something in the manner of a workshop or if it was a part of the evening, which it was.

Q. Is Wyatt T. Walker a member of your church?

[fol. 298] A. He is not.

Q. Did he plan to go to Detroit where your church convention was taking place?

A. He was scheduled and did in point of fact sit at the head table at our dinner in Detroit.

Q. Was that the purpose in going to Detroit?

A. To sit at the head table? That is all he did in our behalf when he was there. For any purpose or reason, this is all he did while there.

Q. Don't you state in that letter he is going to Detroit to be there to meet those who have been in jail?

A. Refer me again to my specific words.

Q. Yes, sir. Look at the third page.

A. "He will come to Detroit also in all likelihood to be on hand when those who have been in jail arrive probably just in time for the ESCRU dinner on September 20th."

Q. Now, you are talking about there in August of 1961 about Walker meeting in Detroit with those who have been in jail, before your trip even begins?

A. It is caught up in all of these documents, a realistic recognition of the possibilities of being arrested because of the interracial nature of our group. At the same time and throughout the primary thrust and emphasis and con- [fol. 299] cern directed to the church is enunciated and the hope we would not be arrested is set forth clearly, our intention not to be arrested but to go on through, but we were not naive about the unlawful arrests that had been taking place.

Q. Reverend Morris, you and the other three plaintiffs in this case have repeatedly testified, both on depositions and those who have testified in the courtroom already, that you did not want to be arrested.

A. That is true.

Q. —on this trip, haven't you?

A. That is correct.

Q. I want—And that is still your testimony?

A. That is correct.

Q. I want to ask you if it is not a fact that you did want to be arrested and that you did decide in advance exactly how many were going to be arrested?

A. We decided how many were going to be involved in the various facets of the group, and at every and all points. We did not decide that we were going to be arrested.

Q. I wish, if you would, turn to Page 4, and I direct your attention to the last sentence of the first paragraph of that letter: "In the present context of things we will want to send at least ten of the pilgrimage participants to jail." [fol. 300] Did you make that statement?

A. In the context of the entire letter, yes.

Q. Now, there is no expressed hope there that you wouldn't be jailed. You say "We will want to send at least ten of the pilgrimage participants to jail." Didn't you?

A. I said, "In the present context of things."

Q. Well, "We will want to send at least ten of the pilgrimage participants to jail."

A. I deny your interpretation of the "We will want" in a private communication facing a situation as it appeared to be, and again our hope, belief, felt and stated that we would not be arrested.

Q. And that's exactly what you did. You changed the number, but you sent 15 of them to jail, including yourself?

A. We did not send them to jail—

Mr. Rachlin: I object to the question. There is no record that anybody sent himself to jail.

The Court: I will sustain the objection to that question.

Mr. Rachlin: I am not aware that a private citizen can put himself in jail.

Q. In this communication of August 4th you urged members to build up publicity on the trip, did you not?

A. I do not recall. If you will show me that, I can verify it.

[fol. 301] Q. I will call your attention to the second paragraph of the fourth page:

"With these restrictions it might be helpful for you to alert any press persons known to be sympathetic . . . they might want to do an advance story. Don't be reticent or self-conscious about the matter if your concern is to strengthen our witness through its advertisement in advance. The New York Herald Tribune has indicated a definite intention of sending someone on the pilgrimage as has the Living Church. There will probably be other press personnel."

A. I did say that at that time.

Q. You were very much interested in the press build-up of this trip, weren't you?

A. I would say rather that we are aware of the communications within the modern world being in part accomplished through the press and were not opposed to Christian witness being revealed to others. At the time of the trip itself we did not send out any advance communications indicating our itinerary, nor as we left New Orleans to Vicksburg, et cetera, did we indicate that our next step was to be wherever it was.

Mr. Watkins: If it please the Court, we offer in evidence [fol. 302] the communication of August 4, 1961, to the applicants.

(Hands to *cousel* opposite)

Mr. Rachlin: Same objection.

Mr. Watkins: We offer in evidence the communication dated August 4, 1961.

The Court: The objection is overruled and the document received in evidence and may be marked.

Mr. Rachlin: Could I ask the courtesy of the Court to explain to me the relevancy of these exhibits?

The Court: Well, in view of your statement yesterday, I can see the wisdom that it would be probably improper for me to give my reasons in the presence of the jury at this time, but I am thoroughly convinced the testimony is competent for a determination of the ultimate question in this case.

(Same received in evidence and marked as Defendant's Exhibit No. 6, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S #6

WITNESS MORRIS

MAY 15 1961

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY

Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia
Jackson 5-7975

August 4, 1961

[fol. 303] To PILGRIMAGE APPLICANTS:

You are one of twenty-two priests accepted for the Prayer Pilgrimage tentatively. A list of these persons accompanies this letter. It has seemed wise to discretely turn down only two applicants.

The tentativeness of your selection is due only to a request now that all prospective participants review the list enclosed and let me know if there are any significant objections to any included thereon. Speak now or forever hold your peace! Anything you write me will be held in confidence. I feel rather confident that this procedure is a formality, and one I am sure you will appreciate, so if you don't hear from me again quite shortly you may assume that your place is reserved.

I expect that we will still fill out our complement of 30 to 37. A mailing to all of the Church's clergy inviting their participation or financial support has only just gone out in the last two week and should bring some response. Also, I may direct one more letter to clerical members of the Society with further information on plans and offering one more chance to enlist. You are certainly free to encourage friends of yours to apply.

I may be in error, but I believe that 16 of the accepted applicants are white and 6 are Negro. I am sorry that we do not have more of the latter and, also, that thus far we do not have any of still other backgrounds. You might especially direct your recruiting efforts to fill in as you [fol. 304] see a need. I would certainly like to see more Negro priests from the South involved. I have not expected any white clergy from the "deep South" but there is a lack here. However, the Negro clergy should find their situation far more supportive of their participation—relatively speaking, that is.

You will want to know how the fund raising is coming. This has caused me more worry than anything for I believe we'll have our personnel. Presently we have about $1,600.00 that has come form many small contributions—mostly from fellow clergy unable to go with us. I have estimated that an additional $500.00 to $1,000.00 will be forthcoming from appeals that are now out. The Southern Christian Leadership Conference has said they could probably help on these basic expenses if it is necessary. This is the organization headed by Dr. Martin Luther King, Jr., who came out publicly in support of our plans the end of June as you have seen in my letter of June 30th to clerical members. With this offer of help if needed it now seems that we can plan on carrying through from the financial standpoint, but any donations you are able to secure for the pilgrimage apart from your personal expenses will be welcomed.

—2—

I am sorry we haven't the resources to say that all of your expenses to the starting point, home from Detroit, etc., can be paid. You will recall from the June 16th letter [fol. 305] that we are prepared to pay up to $75.00 on travel to New Orleans after the first $25.00 of expense in getting there. You can check with the air lines or with whatever travel conveyance you will use and determine the cost. Then we will pay for group accommodations enroute. You must cover your meals enroute as well as meals and accommodations in Detroit and travel home.

Some have said that they could take care of their travel to New Orleans, thereby saving funds here for use with others. Most will require this assistance, however. Please let me know on the enclosed form just what you will require within the terms set forth. Do not feel reluctant to indicate your need . . . it is only that some may be receiving aid from their parishes or others in their home area and I need to know just what the demand on us financially will be.

The Greyhound Company said yesterday that equipment might not be available when we need it although I talked with them in June and it seemed certain that it would. We will pursue this matter. The fact that equipment may be unavailable for charter purposes, however, will not cause any significant change in our plans. We can take regularly scheduled runs. The disadvantage of this is that it would mean that our itinerary would have to be curtailed and it would not be as simple in getting to campuses or parish churches. An advantage to us would come in cost for presumably only a portion of the pilgrimage group will be able to complete the trip and it would be a rather [fol. 306] expensive item to have a half-empty bus make the last part of the journey. Some dramatic benefit would be lost without the chartered bus and we would have a more difficult time in sustaining group process.

Still another alternative would be to take either a chartered bus or a regularly-scheduled one as far as Sewanee or Atlanta and then go by private car in a motorcade. This also would allow the size of the conveyance(s) to be more suited to the actual number still in the group at any one time. Therefore, if there is a possibility that you might drive as far as Atlanta or Chattanooga enroute to the starting point and leave the car there for use on the trip north, please indicate the availability of a car on the enclosed form. We would reimburse the owner at a normal rate for the use of his car and would cover gasoline costs. Assistance in getting to the starting point would be available as per above to be applied against your driving costs to the point where the car was left in readiness.

Depending on various things above we might change our starting point to Jackson, Mississippi. Something would be saved in travel to New Orleans since Jackson is closer to most everyone. It might not be as easy to fly into Jackson, however, but not impossible. I was in Jackson two weeks ago and I believe we could spend Monday night, September 11th, at a Negro college where our preparations would be made. We would only miss one school in New Orleans and could go over to Vicksburg to visit All Saints' College before any of the group kept an appointment with [fol. 307] the Jackson jailer. I will handle a decision on this in the way that seems best strategically and economically.

—3—

The Pastors Union of Dearborn, Michigan, has expressed support of our plans to make a visit there the last stop on the trip. In June I telegraphed the Mayor of Dearborn and said we would like to hear what he and others there were doing to break down Dearborn's restrictive housing patterns. No reply has come from him but the ministers' group took the initiative to suggest that they meet with us. Together those of the pilgrimage who have not remained in Mississippi and the Dearborn pastors group will consider the role of the churches in promoting open *ocupancy* in housing. This is the dynamic of our witness in terms of northern needs that I am using in press releases.

You know from the June 30th letter that the Rev. C. Kilmer Myers of New York will be Chaplain to the group, serving as our spiritual director as we journey together. At the starting point, whether New Orleans or Jackson, the Rev. Wyatt T. Walker, Executive Director of the Southern Christian Leadership Conference, will direct our preparations connected with non-violent discipline. He will come to Detroit also in all likelihood to be on hand when those who have been in jail arrive probably just in time for the ESCRU dinner on September 20th.

Now having made repeated reference to prospective de-[fol. 308] tention of some in jail let me state clearly my understanding of how our plans should go. Mr. Walker and I discussed this today and he is in agreement with what is projected. Within limits the group can made some change as it goes. . . . If there are 30 participants we should plan on between one-half and one-third completing the entire tour so that the concern might be carried to each place and, symbolically, the torch carried to Convention. This would means that between fifteen and twenty would sojourn awhile in probably a Mississippi jail. A few might seek light refreshments the morning of the 12th when we are in Vicksburg and they would then be held there by the Vicksburg jailer. The greater number intended for the witness of incarceration would probably choose to go to Jackson for this. Those who will bear the burden of watching colleagues taken off in the paddy wagon (as I did in Jackson two weeks ago) will continue the trip so that the message of concern may be carried to Detroit. Presumably the group will be able to determine who does what in a manner agreeable to all. I would hope that some would be left to go on through, and, indeed, the bail factor may require that we limit those to be jailed to around ten if there is to enough money to bail them out when decided.

Now on the bail situation. If anyone wants and is able to remain the four to six months in jail he may but I would not urge it on anyone. In nearly all other cases connected with Freedom Riders a certain length of time in the jail is sufficient to make the witness effective. I think [fol. 309] that we should be very flexible in this matter: If someone has to hurry home because of an emergency or to be on hand for Sunday services it should be up to him when he is bailed out. There are preliminary hearings three times a week in Jackson so that the most you would have to stay in jail pending a hearing would be two days. Above that it is optional. If most of those jailed chose to come up to Detroit for the benefit of their witness there, it would seem that they could get out on Tuesday, September 19th, so that they could be at the ESCRU dinner and be met by persons at convention.

—4—

Regarding the question of bail money: Obviously we do not have funds for this as we attempt to simply meet our needs on basic expenses. Mr. Walker of SCLC has indicated he felt quite confident that funds designated for this purpose could be procured and I will be in touch with him in the next few days on this further. The bail money is, of course, refundable once the case is closed. It is felt by all that the case presently in the courts will be decided favorably, thereby causing a return of all bail monies. It is unlikely, however, that disposition of this case will be made favorably in the right court until sometime after our pilgrimage. If for some reason you would prefer to take care of your own bail please let me know and this will further strengthen our available resources for others. Should something develop in the next few weeks to indicate that a sufficient amount for bail for at least ten of our [fol. 310] group is not available I will write you again. In the present context of things we will want to send at least ten of the pilgrimage participants to jail.

Except for our itinerary you may discuss any of these plans with others but kindly refrain from revealing who the other participants are. That will be known in due course. With these restrictions it might be helpful for you to alert any press persons known to be sympathetic . . . they might want to do an advance story. Don't be reticent or self-conscious about the matter if your concern is to strengthen our witness through its advertisement in advance. The NEW YORK HERALD TRIBUNE has indicated a definite intention of sending someone on the pilgrimage as has the LIVING CHURCH. There will probably be other press personnel. Within the next month I shall get out one or more releases announcing our itinerary and other plans. A release is out for today about the Dearborn group welcoming us but I doubt that it will be widely reported.

Sewanee and the various church schools surrounding it will be a major stop. Those who get that far will want to stay at the Sewanee Inn which reportedly last year would not serve dinner to a visiting Negro bishop. The Inn is a Quality Court owned by the University and operated under some form of contract only made in the last year or two. I trust we will have our meals there and find the accommodations available. To I The situation may have been changed with the trustee's decision to open the uni- [fol. 311] versity this past June. However, to insure the availability of reservations and because this is a busy time for visiting parents on the campus would those of you whose names I have checked please write and ask for a double room . . . sending some deposit along. You might make this reservation through some Quality Court in your city insuring that you have a receipt, etc. Ask for a double room without indicating your roommate, or just say another clergyman.

If we are to make our witness in collective fashion we must arrive intact and begin together, so please plan on withholding yourself from provocation of local laws until the Pilgrimage has begun.

Pardon the length of this. More later!

Faithfully,

(Rev.) John B. Morris

The Court: I believe we will take a ten minute recess.

(Whereupon the court recessed for ten minutes)

After Recess

Q. Reverend Morris, two instances you have referred to a public statement issued by Martin Luther King in support of the pilgrimage. Is he a member of your church?

A. No, he is not. May I qualify that?

[fol. 312] Q. Yes.

A. He is a Christian, so we are both members of the Christian church. He is not a member of my denomination.

Q. Do you know the denomination to which he does belong?

A. He is a Baptist.

Q. I believe before the recess I had handed you a communication of yours dated August 19, 1961, to the pilgrimage applicants. Is that correct?

A. This is a letter of mine dated August 19th.

Q. By that time, you had finally decided to start the trip definitely in New Orleans, hadn't you?

A. I believe that is set forth in this letter.

Q. Why did you finally select New Orleans rather than Jackson?

There had been some indecision.

Mr. Rachlin: I submit that is irrelevant. The state of his mind is not important, why he started there in place of some place else.

The Court: Overrule the objection.

A. Mr. Watkins, I will attempt to answer the question although I, along with my counsel, have no understanding of why you ask all these questions which have nothing to do with the facts of my arrest and the suit we bring. But I am glad to tell you if it's of interest, and I'm glad to go [fol. 313] into any and all of the background on these papers, if—

Q. Just answer my specific question. Why did you select New Orleans?

Mr. Rachlin: Your Honor, I request that you ask Mr. Watkins not to interrupt the witness.
The Court: I—
Mr. Rachlin: —If he feels it is not responsive to his question, he could request it of you and not the witness.
The Court: His answer was not responsive, and I will require the witness to answer the question.

A. We desired to go on a pilgrimage testifying to the Episcopal Church of the various concerns which we have that God in Christ might be revealed more fully within his church in all regions in the various parts of the country within the church in the ways in which are needed most immediately now, so we wished them to go from one end of the country to the other. We went in this way from the South to the North, from New Orleans to Detroit. There are major cities that are sort of in line with each other. If the convention had been in Los Angeles, we probably would have gone from Atlanta, something like that. We desired to go through the South to visit church schools, indicating our concern that they are still segregated, so many of them. [fol. 314] We desire to go to the North to visit—

Mr. Watkins: I hate to interrupt the witness. This is not responsive to my question.
The Court: Yes, I think that's responsive to the question. Your question was why did he decide to go to New Orleans rather than Jackson. Now, anything he had in mind which was why he made the change, he can explain.

A. We desired, as I said, to be in the South in terms of church schools; we desired to be in the North in Dearborn, Michigan, a very segregated community from the standpoint of housing patterns, and the appointment there was kept by some of our group; we desired to go to our church's national convention, having come through this pilgrimage of various points that indicated symbolically, as it were, a sermon in action. Our concerns at the same time, one and the same time, we were desirous of gaining support for the front line fighters, as has been said before, or the people who are leading in the area of social change that we feel is needed in the community, that we feel is needed in the church, and at that point in history it was, more specifically, the Freedom Riders' movement which we were supportive [fol. 315] of, although we were not a Freedom Ride. For these reasons we moved from New Orleans to Detroit, and Jackson was en route.

Q. Did you select New Orleans as a beginning point—Is one of the reasons that you wanted to confer with the representatives of CORE in New Orleans?

A. We met in—It would have been more convenient for certain representatives of CORE or Southern Christian Leadership Conference to have met with us in New Orleans. In point of fact, I don't believe any representatives of CORE were at our meeting. Representatives of Southern Christian Leadership Conference were.

Q. In the letter which you have in your hand, you stated your reason for deciding on New Orleans was that it was more convenient for meeting with representatives of CORE, wasn't it?

A. This at one point was a reason for meeting there. It was certainly not a determinative or primary reason.

Q. Did CORE at that time offer you legal assistance in connection with your pilgrimage?

A. I can answer in general terms. If you want me to answer specifically, I'll have to look through this.

Q. I think we can save time if we read from the letter.

[fol. 316] A. I can tell you plainly at one time they did offer—I will have to look at this to locate the time.

Q. I want you to read with me the last paragraph on Page 2 of this communication, if you will, please, sir:

"CORE has said that they could put up $6,000.00 for bail assistance, which, at the going rate of $500.00 a man, would cover twelve of our group. They indicated they might be able to help further if necessary but we can't count on that in our planning. I am hopeful that a full assurance on bail for the balance of the group will be obtained within the week. Several of the participants have indicated they would—or might be able to—cover their own bail. I shall look for the full amount needed and we can see later how this is handled. There very well may be many contributions to come forth after the fact of being jailed and from this office we are prepared to receive donations for such a bail fund. Someone has suggested that we stay in jail until the Church bails us out! I wonder how long this would be?"

Did you ever decide the answer to that question as to how long you would have stayed there if you waited for the Church to bail you out?

A. We did decide not to seek funds from other sources [fol. 317] than from spontaneous concern of churchmen and other concerned persons, and it appears then it was a week for 13 of the 15 and a little later for 2. We did not receive bail funds from organizations which are listed there which had indicated that they might be able to help.

Q. You did not receive any from CORE?

A. No.

Q. I direct your attention to the first sentence on the top of Page 3 of that communication:

"CORE has also said that they would provide us with legal counsel and I am meeting their chief lawyer this Monday as he stops over at the Atlanta airport, probably en route to Jackson. I will discuss all questions pertaining to legal points with him then."

Did CORE make their legal counsel available to you?

A. Their legal counsel assisted us without charge in our trial in municipal court. I actually was never clear whether it was CORE's volunteering of its services or whether he in his own right volunteered his services.

Mr. Rachlin: In view of the fact that is obviously referring to me, Your Honor, I wonder if I might then say and take the liberty of the Court to say that I have no authority from anybody except Mr. Morris to act on his behalf.

[fol. 318] Mr. Stennett: If the Court please, if we need Mr. Rachlin to testify, I suppose we might put him on the witness stand.

The Court: Well, do you want his remark stricken from the record?

Mr. Watkins: Yes, sir, I move that they be stricken.

The Court: I will sustain the motion to strike that part of the remarks by counsel for the plaintiffs as being voluntary on his part, and if he desires to appear as a witness later on, he would have to take the witness stand to testify and be subject to cross examination.

Q. Reverend Morris, my question is, did CORE make their legal counsel available to you, as you stated in that communication?

A. I can only repeat myself, Mr. Watkins. They put me in touch with a man named Carl Rachlin, whom I met in the Atlanta airport. From there on, my relationship was with Mr. Rachlin personally and direct, and never through CORE, and, as I indicated, whether his time given in our behalf was from his own generosity and concern or whether it was in behalf of CORE, I don't know. He is a lawyer with a firm and does a great deal of law work other than for [fol. 319] CORE, and I rather suspect that what he did for us was really on his own time.

Q. Reverend Morris, that may very well be the case. My question to you is, why did you select the language and say "CORE has said that they will provide us with legal counsel."

A. Because they had said that.

Q. And did they do so?

A. In point of fact, I do not know.

Q. Also in that communication, you use this language. And I will ask you to follow me:

"All in all, though, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for us when he said: 'About jail—Here am I, send me. I'm not grave, but I'm obedient.'"

Is that a correct quotation from your letter to the applicants?

A. That is.

Q. Now, my question is, "obedient" to whom? Who was directing that they go to jail?

Mr. Rachlin: I object to the question because the letter doesn't necessarily refer to any particular person. It may [fol. 320] refer to a doctrine, a principle of religion, or any other thing, and therefore I say there is no basis or preface upon which the question could be asked in that form, and I object to it in that form.

The Court: Overrule the objection if he knows.

A. Obedient to God in Jesus Christ, who compels our commitment as Christian clergymen and laymen that race not be a factor in the church or in the community.

Q. And that is to what you referred when you referred in this letter to obedience in going to jail?

A. The person quoted there used the phrase, obedience. "I may not be brave, but I'm obedient."

Q. And you quoted him in your letter as meaning obedience to going to jail?

A. No. Obedience to Christ.

Q. And you did not intend that to—The whole quotation is about jail there. "About jail—Here am I, send me. I'm not brave, but I'm obedient." You mean the word "obedient" did not mean going to jail?

A. Christ upheld imprisonment for one's convictions. We would be obedient, I hope.

Q. I ask you if you didn't, a little further down in that letter, make this statement:

[fol. 321] "We arrive in Jackson late . . ."

I think that should have been "When we arrive in Jackson late Tuesday afternoon, it will be time for supper and we can seek to have it then and there which will mean that the Jackson jailer would be our host for the evening."

What you are telling the applicants there is that you may decide to go to jail Tuesday night the 12th rather than wait until the 13th on Wednesday, isn't it?

Mr. Rachlin: I think that is an improper reading of that letter. The letter says they may be in jail; he didn't say they would go to jail. That's a very important difference. There is nothing that I know of which can compel a person to go to jail on his own initiative. Some intervening force, such as the police officers in this case, are the only way they can go to jail. If the police officers had obeyed their duty, they wouldn't have been in jail.

Mr. Watkins: We object to that and move it be stricken, Your Honor. Mr. Rachlin wasn't there.

The Court: I will overrule the motion and will overrule the objection to the question, and will let him answer it if he knows.

A. Mr. Watkins, may I quote from the first document you [fol. 322] submitted into evidence, in trying to answer this point? Something within that bears directly on this question of jail. May I have that privilege of quoting from that, as you introduced it or as I have it in my pocket?

Q. If we go back through the documents, I don't think we will ever get through.

A. This is the one that was introduced yesterday which is public knowledge. Nothing that we've ever concealed or had in our files, but has been available to any—You are reading now from letters which were private correspondence with a group of persons who were beginning to be a group, although not all had met each other, and I am writing them here on a number of occasions pursuant to our plans. Now, there is implied here something that might have been concealed, whereas in point of fact in our statement you introduced yesterday there is something that bears on this.

Q. All I am asking you is, doesn't this statement in your letter clearly state that your group may have as its host for supper on Tuesday night the 12th the jailer rather than waiting until Wednesday the 13th?

A. This is no more than the realization of the fact that we were an interracial group and did not know whether or [fol. 323] not we would be allowed to eat together as we intended to do, believing it would be sinful to separate, and our brother priests who were Negroes would have to eat some place else. And we realized that this would be viewed with hostility by some, and it apparently was viewed with hostility by your police authorities.

Q. The point I am trying to get over is that you were undecided as to whether the group would go to jail Tuesday night or Wednesday. And I want to read you the next sentence:

Mr. Rachlin: I object to Mr. Watkins' comment since that was not part of the question.

The Court: Overrule the objection.

Q. I would like to read you the next sentence to try to help you on that.

Didn't you say: "I am trying to determine whether we could stay at a college campus that night if it seemed advisable to await the next day for this appointment with destiny"? And you are talking there about you haven't decided whether you are going to spend Tuesday night at Tougaloo and if you did, then you would wait until Wednesday for this "appointment with destiny". And by "destiny," you meant jail?

[fol. 324] A. We didn't mean we wanted to go to jail, but we realized the possibility of this, and we thought the meal together would be of assistance.

Q. And what you were saying here was that you hadn't decided whether or not that would be Tuesday night or Wednesday, had you?

A. Whether we would eat together at a public facility.

Q. And go to jail?

A. No. We could not send ourselves to jail. And if you will read all of the document, you will find the intention and the hope and that which was our prayer at the last minute was that we would not be arrested.

Q. Who decided finally the question of whether you were going Tuesday night or Wednesday?

A. The group decided.

Q. Without any outside help?

A. I recall no outside help.

Q. All right. Let me read you the next sentence in the letter.

"I do not see any reason for not having our supper upon arrival, but I'll wait until my meeting Monday with CORE's lawyer to see what procedure would be best."

Didn't you let that meeting determine whether it would be Tuesday or Wednesday?

[fol. 325] A. I don't think it was decided when we would leave for Chattanooga until we were in New Orleans—

Mr. Rachlin: Just a minute. This is a rather ridiculous thing for me to do because I must ask Your Honor to caution the witness that he has the privilege, if he chooses to accept it, of not giving any testimony of conversations with me, since I am his attorney, and while I am not suggesting to him that he should exercise the privilege, I think Your Honor should advise him that he may have that privilege that such conversation with me would not be admissible in evidence.

The Court: Well, I will advise him—If Mr. Rachlin was your personal attorney to advise you, you have the privilege of claiming the right to refuse to answer because privileged communication between your lawyer and you are privileged, and you are not required to answer; but if he was not your lawyer but was CORE's lawyer, and was conferring with you not as your personal attorney, then it would be your duty to answer the question. Do you understand that?

A. CORE having made an offer of legal assistance, having introduced me to Mr. Rachlin, we were then in no wise obligated or involved with CORE, and it was my under-[fol. 326] standing that he was our attorney from that point on. I am perfectly glad to answer this particular question anyway.

The Court: Very well. It's a privilege you have to refuse to answer if you desire, but you can go ahead and answer it if you want to and waive the privilege.

Q. Why did you refer to him in this letter again as CORE's lawyer, if he was actually yours?

A. He was also CORE's lawyer. At that point we had not retained him and actually we never did retain him. As I said, he volunteered his services.

Q. Then at that time, the time you wrote this letter, he was still acting as CORE's lawyer only, wasn't he?

A. I am mentioning him descriptively here, who he is. We had in fact provided no retainer or formal contractual arrangement. This does not answer the question as to who he was engaged by at any single point. This is who he was. But I can still answer the question.

Q. Did you meet with him on the Monday and make the decision as to whether you would go Tuesday or Wednesday?

A. No, we made no decision with him regarding that.

Q. Did you suggest to the members of your proposed trip that they bring certain matter as reading material in jail?

[fol. 327] A. I don't recall that.

Q. Well, let me read you this sentence in the letter:

"For reading in jail I suggest the P.B. . . . "

That's the prayer book?

A. Yes.

Q. " . . . your Bible, and other things you may want to meditate upon."

Did you suggest that they bring those for reading in jail?

A. I suggested they bring those for reading in jail were they to find themselves in jail.

Q. You didn't qualify it that way in your letter, did you?

A. Not in that sentence, but if you want to read everything and be willing to face the whole question of this, you will find our intention and hope was not to go to jail.

Q. I want to face the whole thing on this, and that is the reason I am introducing these in their entirety in evidence in this case.

We now offer in evidence the communication dated August 19, 1961.

The Court: Has counsel opposite seen it?

(Counsel hands to counsel opposite)

Mr. Rachlin: Your Honor, I bore myself, but I must [fol. 328] say that I object for all the previous reasons I have stated.

The Court: It will be overruled. Let the document be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Defendant's Exhibit No. 7, which Exhibit follows here below.)

EXHIBIT DEFENDANT'S #7

WITNESS MORRIS

MAY 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia
Jackson 5-7975

August 19, 1961

To PILGRIMAGE APPLICANTS:

We now have twenty-six clergy preparing to go on the Prayer Pilgrimage. Of the twenty-two listed in my letter of August 4th, one has had to withdraw due to circumstances beyond his control. Five priests have been accepted since that date. A revised list is enclosed. All of you have the letter of the 4th and I must refer you to the second paragraph therein as still applicable. I have received no objections to any of the participants listed previously and I am confident that both those on the original list and those added will welcome the company of one another.

Three applicants from the original number and two of [fol. 329] those recently added are still due to return their information forms advising me of what funds they will require and, also, serving to confirm their intention to go along. If I have checked here .... you are one of these. Please send it to me right away.

As you can see we still have room for more participants. Also, I still have a hope that additional Negro priests and some from other non-Caucasion backgrounds will apply. I have continued to make contacts with various people who ought to be in a position to encourage such folk to consider going.

Several things are considerably more settled than when I last wrote you. Chief among them is my signing of a contract with the Greyhound Company yesterday for a chartered bus departing from New Orleans at 8:00 A.M. on Tuesday, September 12th, enroute to Jackson, with stops at a school in New Orleans and a college in Vicksburg, Mississippi. Estimated arrival time in Jackson, following the two stops and a box lunch on board, is about 5:30 P.M. The bus will deposit us at the Jackson terminal and is not scheduled to go beyond. The cost of this bus service for your information is $227.40. The bus can accomodate 37 passengers.

It seemed best to stay with the original plan of beginning in New Orleans because it is a reasonably easy place to get to by public conveyances, it is a more suited place to assemble without difficulty, and our commencing there allows us to see two church institutions before possible [fol. 330] incarceration. Also, it is a more convenient place for representatives of CORE and SCLC to meet with us in preparations. The bus is chartered only to Jackson because of the likelihood of there being no one to continue in it at a great expense.

The suggestion has been made that we hope that the entire group might visit the jail, staying only the minimal time required and then posting bail and continuing the trip. I think there might be value in the first part of the suggestion (if sufficient bail is located and thought to be potentially forthcoming), but an alternative would be for a portion of the group to be bailed out forthwith and continue the trip. Of course, at that point, if we hope to make General Convention, the group, whether all or a part, might

—2—

have to break into sections in order to cover all points desired. On the other hand, only one or two institutions after Jackson could well suffice symbolically—and there aren't a great many more enroute. Sewanee should certainly be on the list for after Jackson. You may read something in the press about a situation there only a week ago when two Negro priests were not served at a university-owned facility on campus. The excuse given was that it is leased out by the university. These were students in the summer Graduate School of Theology.

I do not *thing* that we should utilize automobiles in [fol. 331] making the balance of the trip as I suggested in the previous letter as a possibility. Too many factors regarding time and itinerary are uncertain and will have to remain so. We cannot plan very carefully for after Jackson. The most I will make definite will be travel from Chattanooga to Sewanee, with the Rev. Robert Hunter of that city assisting. He would be coming with us except for the fact that his wife expects their first baby at about the time we would be in Jackson! We will, undoubtably have some service in his church while passing through.

Beyond Sewanee we could take whatever means of travel seemed best, including, possibly, air coach if we were to want to go directly to Detroit at that point. The schools north of Sewanee are primarily St. Margaret's in Versailles, Ky., and Kenyon in Ohio. However we travel to Detroit, we will then probably take another bus (if the entire group is still together) or cars out to Dearborn to meet the Dearborn Pastors' Union. The appointment with them is Saturday afternoon, September 16th. It could be changed if necessary, I am sure.

To date we have received $2,600.00 in contributions for the pilgrimage and more will be forthcoming. We will be a.o.k. as far as basic costs go it now appears. If anything remains in this account there will undoubtably be further need as far as getting the participants to return to Jackson for a hearing—if other cases have not caused disposition before such time. Also, there have been considerable [fol. 332] expenses incurred here in connection with the Pilgrimage which could stand recompense, although I am presently listing all monies received as being available for expenses involved directly in the action of the plan.

CORE has said that they could put up $6,000.00 for bail assistance, which, at the going rate of $500.00 a man, would cover twelve of our group. They indicated they might be able to help *furthere* if necessary but we can't count on that in our planning. I am hopeful that a full assurance on bail for the balance of the group will be obtained within the week. Several of the participants have indicated they would—or might be able to—cover their own bail. I shall look for the full amount needed and we can see later how this is handled. There very well may be many contributions to come forth after the fact of being jailed and from this office we are prepared to receive donations for such a bail fund. Someone has suggested that we stay in jail lows us to see two church institutions before possible [fol. 330] incarceration. Also, it is a more convenient place for representatives of CORE and SCLC to meet with us in preparations. The bus is chartered only to Jackson because of the likelihood of there being no one to continue in it at a great expense.

The suggestion has been made that we hope that the entire group might visit the jail, staying only the minimal time required and then posting bail and continuing the trip. I think there might be value in the first part of the suggestion (if sufficient bail is located and thought to be potentially forthcoming), but an alternative would be for a portion of the group to be bailed out forthwith and continue the trip. Of course, at that point, if we hope to make General Convention, the group, whether all or a part, might

—2—

have to break into sections in order to cover all points desired. On the other hand, only one or two institutions after Jackson could well suffice symbolically—and there aren't a great many more enroute. Sewanee should certainly be on the list for after Jackson. You may read something in the press about a situation there only a week ago when two Negro priests were not served at a university-owned facility on campus. The excuse given was that it is leased out by the university. These were students in the summer Graduate School of Theology.

I do not *thing* that we should utilize automobiles in [fol. 331] making the balance of the trip as I suggested in the previous letter as a possibility. Too many factors regarding time and itinerary are uncertain and will have to remain so. We cannot plan very carefully for after Jackson. The most I will make definite will be travel from Chattanooga to Sewanee, with the Rev. Robert Hunter of that city assisting. He would be coming with us except for the fact that his wife expects their first baby at about the time we would be in Jackson! We will, undoubtably have some service in his church while passing through.

Beyond Sewanee we could take whatever means of travel seemed best, including, possibly, air coach if we were to want to go directly to Detroit at that point. The schools north of Sewanee are primarily St. Margaret's in Versailles, Ky., and Kenyon in Ohio. However we travel to Detroit, we will then probably take another bus (if the entire group is still together) or cars out to Dearborn to meet the Dearborn Pastors' Union. The appointment with them is Saturday afternoon, September 16th. It could be changed if necessary, I am sure.

To date we have received $2,600.00 in contributions for the pilgrimage and more will be forthcoming. We will be a.o.k. as far as basic costs go it now appears. If anything remains in this account there will undoubtably be further need as far as getting the participants to return to Jackson for a hearing—if other cases have not caused disposition before such time. Also, there have been considerable [fol. 332] expenses incurred here in connection with the Pilgrimage which could stand recompense, although I am presently listing all monies received as being available for expenses involved directly in the action of the plan.

CORE has said that they could put up $6,000.00 for bail assistance, which, at the going rate of $500.00 a man, would cover twelve of our group. They indicated they might be able to help *furthere* if necessary but we can't count on that in our planning. I am hopeful that a full assurance on bail for the balance of the group will be obtained within the week. Several of the participants have indicated they would—or might be able to—cover their own bail. I shall look for the full amount needed and we can see later how this is handled. There very well may be many contributions to come forth after the fact of being jailed and from this office we are prepared to receive donations for such a bail fund. Someone has suggested that we stay in jail until the Church bails us out! I wonder how long this would be?

—3—

CORE has also said that they would provide us with legal counsel and I am meeting their chief lawyer this Monday as he stops over at the Atlanta airport, probably enroute to Jackson. I will discuss all questions pertaining to legal points with him then. . . . Let me remind you, however, of the possibility that the ICC might rule favorably before the time of our journey and I sincerely [fol. 333] hope they will. I think that we should hope for the changes that mean no jail—not because we aren't prepared to go, but so that the barrier might simply fall for the benefit of everyone. Also, while I am realistic, I am not beyond hoping and praying that even our pilgrimage might influence the authorities to change voluntarily. All in all, though, I think you can count on becoming *familier* with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for others when he said: "About jail—Here am I, send me. I'm not brave, but I'm obedient."

I am working on the place we will stay in New Orleans Monday, September 11th. It will probably be either at a Negro college campus or at a motel which will take integrated groups. I will let you know the place in my next letter. Everyone should plan on arriving by 6:00 P.M. that day so that we can have supper together and an adequate amount of time for our preparations session. I will give you the directions to where it will be and you will have to take a taxi from the airport or wherever you come in. It will be better if we are not disturbed either by the press or hecklers that evening, so please do not let the press know.

We *we* arrive in Jackson late Tuesday afternoon it will be time for supper and we can seek to have it then and there which will mean that the Jackson jailer would be our host for the evening. I am trying to determine whether we could stay at a college campus that night if it seemed [fol. 334] advisable to await the next day for this appointment with destiny. I do not see any reason for not having our supper upon arrival, but I'll wait until my meeting Monday with CORE's lawyer to see what procedure would be best. If we stayed overnight we would have to purchase individual tickets the next day and be headed for an intended trip. . . . this would be more costly and less natural than simply going straight to the terminal. So, barring unforseen factors, I believe we should have supper upon arriving in Jackson, but I've shared this little consideration with you and other observations of a lengthy nature so that you would see the situation as I do.

You will want to come with only one suitcase if possible. Attire enroute from New Orleans should be in clericals and throughout the pilgrimage. However, I suggest that you have one shirt and tie with you in case it's wanted. Bring your Prayer Book-Hymnal or small copies of each. For reading in the jail I suggest the P.B., your Bible, and other things you may want to meditate upon. There is no guarantee, however, that you can retain all of these in your immediate possession. Where several of you are coming from the same place, would you talk among yourselves and plan on one person bringing a compact communion kit, together with elements?

I am ordering sufficient copies of Part III of The 'Grey' Book for everyone. Entitled "The Kingdom, the Power and the Glory", I think this has several excellent litanies we may want to use, but if not used corporately I am sure you will [fol. 335] want to use, but if not used corporately I am sure you will find it helpful in personal devotions. Should you have something you think might be helpful to

—4—

the group along these lines, bring it or consult with our Chaplain, the Rev. C. Kilmor Myers.

At Sewanee we will not stay at the Sewanee Inn, for they have said, after cancelling a reservation I made, that they are filled during the week of our tour. Because this is the opening week of school I am sure they will be filled and there was nothing I could do except make protest over their refusal to serve the two Negro priests mentioned previously. However, I have advised them that we will surely hope to have some of our meals there. Perhaps the University will see to the changing of the policy before we get there. We will probably stay in some university dormitory, which I have requested, or in faculty homes which have been offered. If any of you are driving to New Orleans, I do not think it would be out of order to go via Sewanee and have lunch at the Sewanee Inn. The University has its own police department which could remove you if you sat quietly at the counter awaiting service as countless students have done. I suggest that it would be well for some to stop—if they are driving and it's convenient—in the event that we might be forced to cancel our group visit there, and it would not matter if a few stopped in and the whole group came later.

In my next letter I shall send checks for the amounts you [fol. 336] have indicated will be needed to help get you to New Orleans. You can give me an accounting later and we will see what adjustments can be made if you spent appreciably more or less. Those reporting that their expenses would be covered otherwise are free to submit an accounting if other sources should not come through. However, I am figuring closely on the basis of what has been called for and will appreciate hearing if there is a revision in your asking.

I shall prepare a news release for September 3rd revealing final plans and giving the names of those to be involved. If you have strong objections to my releasing the names at that time, please let me hear from you. THE LIVING CHURCH will not be sending a man on the bus with us, but will cover us from other sources. Because we are not filled to capacity

I will be glad to receive requests from other press media who want to come along. Except for the names of participants you may share the information in this letter with people known to you, and especially be sure that the local Society group (if any) is kept informed and involved. One local group is planning a service of witness on the night of the 11th.

Other details: I am hoping that participants can be housed in Detroit without charge either in a parish house converted into a dormitory or in private homes. However, if you want other accomodations, you must contact the convention office at 33 E. Montcalm St., Detroit 1, Michigan. Time of arrival there is uncertain, but we should aim for [fol. 337] September 16th. . . . Should you need to telephone me before we meet in New Orleans my home number here is 255-0778. An additional line at the office is 525-2953. . . . I suggest you bring such money as you will bring in Travellers Checks, and leave a record of the numbers at home as per their advice. . . . Don't be surprised if the arresting officers and others are quite civil and polite: It's a poor picture of the Northern image of the South when "riders" tell the press how pleasantly surprised they were. Be cordial, but resolute. When anger is expressed, return love.

Faithfully,

(Rev.) John B. Morris

TENTATIVE LIST OF PARTICIPANTS

As of August 19th (Not alphabetical!)

The Rev. Gilbert S. Avery, III	Roxbury, Mass.
The Rev. Lee A. Belford	New York, N. Y.
The Rev. Myron B. Bloy, Jr.	Cambridge, Mass.
The Rev. Malcolm Boyd	Detroit, Mich.
The Rev. James P. Breeden	Boston, Mass.

At Sewanee we will not stay at the Sewanee Inn, for they have said, after cancelling a reservation I made, that they are filled during the week of our tour. Because this is the opening week of school I am sure they will be filled and there was nothing I could do except make protest over their refusal to serve the two Negro priests mentioned previously. However, I have advised them that we will surely hope to have some of our meals there. Perhaps the University will see to the changing of the policy before we get there. We will probably stay in some university dormitory, which I have requested, or in faculty homes which have been offered. If any of you are driving to New Orleans, I do not think it would be out of order to go via Sewanee and have lunch at the Sewanee Inn. The University has its own police department which could remove you if you sat quietly at the counter awaiting service as countless students have done. I suggest that it would be well for some to stop—if they are driving and it's convenient—in the event that we might be forced to cancel our group visit there, and it would not matter if a few stopped in and the whole group came later.

In my next letter I shall send checks for the amounts you [fol. 336] have indicated will be needed to help get you to New Orleans. You can give me an accounting later and we will see what adjustments can be made if you spent appreciably more or less. Those reporting that their expenses would be covered otherwise are free to submit an accounting if other sources should not come through. However, I am figuring closely on the basis of what has been called for and will appreciate hearing if there is a revision in your asking.

I shall prepare a news release for September 3rd revealing final plans and giving the names of those to be involved. If you have strong objections to my releasing the names at that time, please let me hear from you. The Living Church will not be sending a man on the bus with us, but will cover us from other sources. Because we are not filled to capacity

I will be glad to receive requests from other press media who want to come along. Except for the names of participants you may share the information in this letter with people known to you, and especially be sure that the local Society group (if any) is kept informed and involved. One local group is planning a service of witness on the night of the 11th.

Other details: I am hoping that participants can be housed in Detroit without charge either in a parish house converted into a dormitory or in private homes. However, if you want other accomodations, you must contact the convention office at 33 E. Montcalm St., Detroit 1, Michigan. Time of arrival there is uncertain, but we should aim for [fol. 337] September 16th. . . . Should you need to telephone me before we meet in New Orleans my home number here is 255-0778. An additional line at the office is 525-2953. . . . I suggest you bring such money as you will bring in Travellers Checks, and leave a record of the numbers at home as per their advice. . . . Don't be surprised if the arresting officers and others are quite civil and polite: It's a poor picture of the Northern image of the South when "riders" tell the press how pleasantly surprised they were. Be cordial, but resolute. When anger is expressed, return love.

Faithfully,

(Rev.) John B. Morris

Tentative List of Participants

As of August 19th (Not alphabetical!)

The Rev. Gilbert S. Avery, III	Roxbury, Mass.
The Rev. Lee A. Belford	New York, N. Y.
The Rev. Myron B. Bloy, Jr.	Cambridge, Mass.
The Rev. Malcolm Boyd	Detroit, Mich.
The Rev. James P. Breeden	Boston, Mass.

The Rev. David H. Brooks	Tallahassee, Fla.
The Rev. Robert C. Chapman	Hempstead, N. Y.
The Rev. Joseph S. Dickson	Detroit, Mich.
The Rev. James W. Evans	St. Clair, Mo.
[fol. 338] The Rev. John M. Evans	Toledo, Ohio
The Rev. Quinland R. Gordon	Washington, D. C.
The Rev. James B. Guinan	Farmington, Mich.
The Rev. W. Robert Hampshire	Farmingdale, N. Y.
The Rev. Cornelius DeWitt Hastie	Boston, Mass.
The Rev. Gerald W. Humphrey	Beacon, N. Y.
The Rev. James G. Jones	Chicago, Ill.
The Rev. Jack Malpas	Baltimore, Md.
The Rev. John B. Morris	Atlanta, Ga.
The Rev. C. Kilmer Myers	New York, N. Y.
The Rev. Robert L. Pierson	Evanston, Ill.
The Rev. Robert P. Taylor	Chicago, Ill.
The Rev. Geoffrey S. Simpson	Pewaukee, Wis.
The Rev. William A. Wendt	Washington, D. C.
The Rev. Merrill Orne Young	Boston, Mass.
The Rev. Layton P. Zimmer	Swarthmore, Pa.
The Rev. Canon John Crocker, Jr.	Providence, R. I.

Q. One last question with reference to this communication of August 19, 1961. Didn't you advise the applicants for this pilgrimage not to be surprised if the Jackson police were polite and not to comment on the fact that they were [fol. 339] treated politely by Jackson police?

A. I think I did.

Q. Now, don't you think it was rather strange to be advising the applicants for this type of pilgrimage that they were going to be treated politely by the Jackson police but to please don't say anything about being treated politely?

A. Do I think this strange to advise them this way?

Q. Yes.

A. Obviously not. I chose to do so.

Q. You didn't want publicity to go out that the Jackson police had done anything good?

A. Mr. Watkins, I'm a Southerner, and I know that Southern gentlemen can be awfully polite even when they are sticking a knife in you, as Northern gentlemen can too, and I know the devil can quote scripture, and I know it makes a good public impression to arrest people with a smile on your face and seem like you are preserving peace, when in point of fact you are unlawfully arresting them.

Q. Didn't you say, "Don't be surprised if the arresting officers and others are quite civil and polite: It's a poor picture of the Northern *imagine* of the South when 'riders' tell the press how pleasantly surprised they were."
[fol. 340] Now, you are telling members of your group, as prospective Riders, if you are treated politely by Jackson police, please don't say anything about it because this leaves a bad impression for us in the Northern press, aren't you?

A. I didn't say we were Riders. There had been some Freedom Riders that expressed surprise that we were gentlemen down here, and this frankly bothered me, as a Southern gentleman. Some of our Yankee friends have a feeling that we look like monsters, and I only wanted them to know that we don't look like monsters, and even though we may occasionally act in an unnecessary fashion, that we can do it politely.

Q. You didn't want it mentioned?

A. I was trying to warn them in advance if there were to be any confrontation with Southern police, don't be surprised if they're polite. And Captain Ray is very polite. And—

Q. Weren't the others polite too?

A. Yes, they were polite too.

Q. Did you meet any impolite Jackson policeman while you were here?

A. Let's see. You mean— Well, we only met three who arrested us, and then we met personnel in the jail.

[fol. 341] Q. Were any of them impolite to you?

A. Yes.

Q. Who?

A. The man that took our fingerprints, I don't think was very polite.

Q. Any others?

A. I can only answer for myself. Maybe someone else had a different experience.

Q. I have handed you a communication from you to the applicants dated August 26, 1961, have I not?

A. August 26, 1961, right.

Q. In that communication you told them that complications had arisen because you had learned that $2,000.00 appeal bonds were being required by Freedom Riders in Jackson, didn't you?

A. Yes, I did.

Q. You told them that you—that help had been offered you from other organizations in order to raise the necessary bonds in Jackson, didn't you?

A. Necessary appeal bonds, should we need appeal bonds.

Q. And in this communication you refer— Let me read it.

"I have received tentative word from another organization that they could help with bond for between ten to [fol. 342] twelve men. They asked that I not identify them now, but it is a leading organization in the civil rights field."

Now, what organization was that?

Mr. Rachlin: I object to the question.

The Court: Overrule the objection.

A. My memory is a little vague. I think it was the Southern Christian Leadership Conference or the NAACP.

Q. Did that organization furnish bond assistance?

A. No.

Q. Continuing with your letter:

"Also there is a chance we might hope for some assistance from '281' but I'm sure it couldn't be in the figures we need."

What was "281"?

A. "281" is the National Council of the Episcopal Church, which was located then at 281 Park Avenue South, New York City.

Is that your question?

Q. Yes. Did you receive bond aid from that organization?

A. We received no direct funds from them. They acted as a channel for some of the contributions that were made which were sent to them and forwarded to us.

Q. Continuing with your letter, you state:

[fol. 343] "If CORE secures adequate coverage from a bonding company they might be able to renew their offer."

Now, there, by CORE, you were talking about the Congress of Racial Equality, were you not?

A. That is correct.

Q. Did they furnish that bonding assistance?

A. They furnished no bonding assistance, and I don't believe it was ever possible for any person arrested on charges similar to ours to obtain assistance from a bonding company when cash bond was required at all times.

Q. In view of the increase in the amount of the bond required of Freedom Riders in Jackson, Mississippi, did that make you reconsider the number of your group that you thought ought to go to jail?

Mr. Rachlin: I object to the question. The witness has repeated himself time and time again that nobody in this group wanted to go to jail or thought they ought to go to jail. I think the question is improper.

The Court: Sustain the objection to that.

Mr. Watkins: If it please Your Honor, just for the sake of the record, I want to point out that in numerous of the letters they have made the flat statement, "We want ten of our members to go to jail," without any quali- [fol. 344] fications whatever. I am going to read another statement in this letter to the same effect.

The Court: Read that quotation again. Or rather, let the court reporter read it back.

Mr. Watkins: May I refer back to the document?

The Court: Yes. I want to get the question. I thought it assumed something not in the record. That is the reason I sustained it.

(Last question was read by the court reporter)

The Court: Yes. I overrule the objection.

Mr. Rachlin: I thought you sustained it.

The Court: Yes, but since it is called to my attention some of the excerpts in the others, I remember that there was discussed how many wanted to go to jail or thought would go to jail—

Mr. Rachlin: That doesn't mean "ought to go to jail." It's an entirely different idea from saying that—. The question that Mr. Watkins propounded to the witness said, "Do you think they ought to go to jail?" "Ought to go to jail" is a different idea.

The Court: Get that quotation in the former document, Mr. Watkins.

Mr. Watkins: All right, sir. This is the exact language [fol. 345] of it, Your Honor. It's in the communication dated August 4, 1961.

The Court: Get the document itself.

Mr. Watkins: It's the last sentence in the first paragraph of the fourth page.

The Court: Read it.

Mr. Watkins: (Reading) "In the present context of things we will want to send at least ten of the pilgrimage participants to jail."

The Court: Overrule the objection.

Mr. Rachlin: One second. I think the witness has explained the words "in the present context of things." Now—

The Court: I overrule the objection.

Q. Now, Mr. Morris, bearing in mind you wrote these letters and I didn't— You remember that?

A. Yes, indeed, and I gave them to you.

Q. Yes, sir, at the Court's instruction.

A. At your request.

Mr. Rachlin: —I'm sorry. There—

The Court: —Very well, Gentlemen. Right now. Expound your next question.

Mr. Watkins: Yes, sir.

[fol. 346] Mr. Rachlin: Well, I think the comment "on the Court's instructions" is actually untrue. I volunteered. At Mr. Watkins' request, I had these—

The Court: The record shows for itself. I don't care to go any further, Gentlemen.

Repeat the question and let him answer.

Q. I'd like to ask you if this sentence does not appear in the letter of August 26, 1961:

"There are many possibilities, but at the present it looks like it may be the better part of valor to consign only a dozen men to jail."

Now, is that your language?

A. That is. May I explain it?

Q. I think the language speaks for itself. Do you think it needs explaining?

A. To you, yes.

The Court: I will let him explain.

Q. Explain it, then. What do you mean by the word "consign"?

A. We were a group of 28 soldiers entrenched facing the enemy, and someone must go out. Certainly not desiring to be shot or killed or even desiring to go out. Then you will consign—the group will decide and consign how many it has and has to go out of the trench, out of the place of [fol. 347] protection, to meet the enemy. We made a conscious choice at the time we were at Tougaloo College who would go to Chattanooga and thence to the church schools there by means of public conveyance, having lunch as we hoped to have it, hoping and desiring that we would not be shot down by the enemy coming out of Tougaloo then with our tickets and ready to go, having no hope for arrest, but not spurning what we felt was the necessary witness to Christ of being undivided racially. We also wished that the pilgrimage itself, which spoke to the church primarily, should not be destroyed by those who would possibly deter the Chattanooga group, so that a portion of our group was protected, as it were, from meeting the enemy. This was a strategic consideration where you don't send all of your forces out at one time.

Q. Then this was a military operation?

A. Christians are known, in their better days, for being soldiers of Christ. When we are baptized into Christ we are called to be such.

Q. Who made the decision as to how many men you would consign to jail?

A. Of course, we didn't consign them. Your authorities here consigned them. This is a form of reference here in a [fol. 348] private communication to a group of men that catches up within the word and its meaning a realization of the possibilities. In the context of all of these documents there is hope and prayer that it would not be so. The group itself decided who would comprise the various parts of our pilgrimage.

Q. In your explanation you made several references to the enemy. About whom were you talking?

A. Sin, and those who practice it and maintain it, which includes all of us, but sometimes in certain areas of society and communities and in the church it is more vicious and difficult to deal with. The enemy of sin in the world; the devil, if you want. You want me to read from the prayer book and describe this?

Q. No, sir, that is enough.

Mr. Rachlin: I think it might be very interesting. I think the witness might be allowed to, Your Honor.

The Court: Very well.

Mr. Rachlin: Please do it, Mr. Morris, right this minute.

A. When we are baptized into Christ's church—

Mr. Rachlin: Tell us what you are reading from.

A. I am reading from the Book of Common Prayer, [fol. 349] the service of Holy Baptism, the occasion where persons in all parts of Christ's church, whatever denomination, in baptism are made members of Christ and part of the body of Christ, the Church. After a person has been baptized with water and the remission of his sins so signified, then, in our church, at least, he is signed on his forehead with a cross and the water, and the minister says this: "We receive this child or this person into the congregation of Christ's flock and do sign him with the sign of the cross in token that hereafter he shall not be ashamed to confess the faith of Christ crucified and manfully to fight under his banner against Sin, the World, and the Devil, and to continue Christ's faithful soldier and servant unto his life's end."

If this sounds like a military operation, so be it.

The Court: Have you finished?

The Witness: Yes, sir.

The Court: Very well, Mr. Watkins, proceed.

Mr. Watkins: We offer in evidence the communication of August 26, 1961.

The Court: Has counsel opposite seen it?

(Counsel hands to counsel opposite)

Mr. Rachlin: Same objection.

[fol. 350] The Court: Let the objection be overruled and the document received in evidence and marked as an exhibit.

(Same received in evidence and marked as Defendant's Exhibit No. 8, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S #8
WITNESS MORRIS
May 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia
Jackson 5-7975

August 26, 1961

TO PILGRIMAGE APPLICANTS:

Since my letter of August 19th and the listing of 26 men as of that date I have heard from several other prospective participants. The Rev. Morris Samuel of Long Beach, California, is a definite applicant. Three men have tentatively asked to be included, although in each case there are circumstances which may prevent their coming even if we can include them. They are: The Rev. Powell Woodward of Cincinnati, Ohio; the Rev. Andrew Jensen of Fitchburg, Mass.; and the Rev. James E. Woodruff of Chicago, Ill. If you know just cause why any of these should not be added to the group, speak now! Keep up your efforts to enlist others for we can accomodate 35 and there is always a possibility of drop-outs due to unforseen circumstances.

Enclosed is an exchange of correspondence with All Saints' College in Vicksburg, Mississippi. Because my de- [fol. 351] cision and response regarding this involves you, I am sure you will want to see these letters. Pardon any typographical errors. Also enclosed are the enclosures I sent the Rev. Mr. Allin. His letter to me should be treated confidentially, and, if you should differ with him, please don't write him critically. If you differ with my reply—stated or implied—by all means let me have your frank reactions. We shall probably receive other appeals similar to this asking us to cancel plans.

Complications have arisen regarding bail assistance from CORE. The appeal bond for each convicted rider in Jackson has been set at $2,000.00 and they have had to withdraw their offer of assistance on the initial bond of $500.00 which each person arrested in September would have to post if he wanted out. This also means that we could anticipate the need of the same two thousand dollars for every man arrested when trials come up next spring. The CORE lawyer is confident he will win the case, but it may take a year and a half. Locating $2,000.00 per man for thirty men would be difficult.

I have received tentative word from another organization that they could help with bond for between ten to twelve men. They asked that I not identify them now, but it is a leading organization in the civil rights field. Also, there is a chance we might hope for some assistance from "281" but I'm sure it couldn't be in the figures we need. If CORE secures adequate coverage from a bonding company they might be able to renew their offer. We can expect [fol. 352] some contributions from concerned churchmen which might be sufficient to sustain an arrangement we could make directly with a bonding company. There are many possibilities, but at the present it looks like it may be the better part of valor to consign only a dozen men to jail. The picture could change. Some may want to stay in jail or await help from the Church back home. I will simply go to New Orleans armed with information about what I know is available.

I will be writing again within the week probably and will send checks as per your stated needs for travel.

Faithfully,

(Rev.) John B. Morris

The Court: Gentlemen of the jury, under the same instructions I gave you yesterday, I will let you separate again and be back at 1:30.

(Whereupon the court was recessed until 1:30 P.M.)

After Recess

(Mr. Watkins continues:)

Q. Reverend Morris, I hand you your letter of September 2, 1961, to the pilgrimage participants, and I ask you if that is not a true copy of the document.

A. This is my letter.

[fol. 353] Q. In this letter you advise the group that arrangements had been made for the group to spend the night of September 11, 1961, at the Colored YMCA in New Orleans? Is that correct?

A. The Dryades Street YMCA is the Negro YMCA.

Mr. Watkins: We offer this letter.

Mr. Rachlin: He has shown it to me, and I make the same objection.

The Court: The objection is overruled. Let the document be received in evidence.

(Same received in evidence and marked as Defendant's Exhibit No. 9, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S #9

WITNESS MORRIS
MAY 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia
Jackson 5-7975

September 2, 1961

TO PILGRIMAGE PARTICIPANTS:

This may be my last letter before we meet in New Orleans. As of now we have 27 definite participants and 2 men who are tentative. I will receive collect calls from any men that you believe should go to seek to fill/our ranks.

If you asked for all or a part of the available $75.00 to help get to New Orleans, a check is enclosed. After the pilgrimage is over, I shall ask all participants to advise me of just how much money they personally have had to [fol. 354] expend and what their general need is and we will see if any remaining funds can be fairly distributed.

The two enclosures speak for themselves. I wrote letters similiar to the one here to Birmingham clergy to Jackson clergy in hopes that we might have a conference together. I have heard nothing from Jackson yet. An acceptance from there would suggest that we spend the night at Tougaloo Southern Christian College, the campus which will accomodate us if we want.

In New Orleans we will meet and stay at the *Dryades Street YMCA, 2222 Dryades Street, New Orleans 13, La.* Supper will be served at 6:30 P.M. on Monday, September 11th. Please try to get there in advance of that hour. From the airport I imagine the limousine in to the downtown section would be advised, and then walk or take a taxi to the YMCA. This is the Negro YMCA in New Orleans. Our accomodations, with rented cots, etc., will not be elegant but I believe it will be adequate. The phone number is: 523-7392. The director is Mr. Harris. We will also have breakfast there the next morning and they will fix box lunches to take with us on the bus on Tuesday for the meal before Vicksburg.

You will want to leave this information at home in the event your family should need to contact you. In the event of need in Jackson I believe the Rev. Ed Harrison would be helpful. In Birmingham the Rev. Louis Mitchell or the Rev. Josiah Ware would be men who would extend some [fol. 355] help in relaying any emergency messages. Of course, you can call home at intervals if you want. These names are of men I've not consulted with regarding mentioning them to you. Of the clergy they are simply the ones I would call if I had need.

I have not yet issued a release on final plans and may not. At this point it seems best not to reveal the points on our itinerary in advance. . . . . except that Sewanee and Dearborn have been well publicized. Possibly I may simply prepare a carefully worded statement suggesting the nature of our venture and let it go out with a list of participants.

More later if necessary, but my previous letters have covered most points, I believe. I commend you for your steadfastness and I look forward to seeing you in New Orleans.

Faithfully,

/s/ J. MORRIS
John B. Morris

Q. Three days later on September 5, 1961, you wrote the applicants another letter, didn't you?

A. I did.

Q. And that is the letter you have in your hand?

A. Yes. I haven't finished looking it over.

Q. I beg your pardon.

In that letter you warned the group that the situation was [fol. 356] tense in New Orleans at that time, didn't you?

A. I did.

Mr. Rachlin: This is getting far afield. Are we also involved in situations in New Orleans?

The Court: Are you objecting?

Mr. Rachlin: I am objecting.

The Court: Overrule the objection.

Q. You suggested to them in that letter, in view of the tense situation existing in New Orleans, that the group be very careful not to attract any particular attention?

A. I did.

Q. You actually told them that if they arrived in a body, to go to the YMCA separately, to separate and go as individuals, didn't you?

A. I think I did, yes.

Q. Why were you being so careful with the tense situation in New Orleans? Was that not the place where you desired your companions to go to jail?

A. The people of New Orleans were endeavoring to implement a Federal Court ruling regarding school desegregation, and we had a great deal of respect for the community's need then to do this without other issues disturbing them.

Q. And you realized that your group could disturb them?

[fol. 357] A. Interracial group in the South can always disturb, at least in these times, some of the white people. Not many, but some.

Q. You were considerate of the tenseness of the situation in New Orleans. Were you as equally considerate of the tenseness of the situation in Jackson, which was confronted with the Freedom Rider invasion?

A. We did not know that you were endeavoring to follow the Federal Court orders, as the people in New Orleans were.

Q. As I understand your answer, you were considerate of New Orleans because you thought New Orleans was a legal town, and you were not considerate of Jackson because you did not think we were a legal town. Is that right?

A. I didn't say that.

Q. In that letter you also advised the applicants that you had been in touch with Dr. Beittel, President of Tougaloo, and made arrangements for your group to spend the night of September 12th at Tougaloo?

A. I think they call it Tougaloo. We had been in touch with him.

Q. Well, I'll pronounce it any way you wish. You had advised them that they would spend the night of September 12th at Tougaloo, and you gave them Dr. Beittel's telephone number in case you needed to get in touch with them there, [fol. 358] didn't you?

A. Yes, I did.

Mr. Watkins: We offer in evidence the letter of September 5, 1961.

Mr. Rachlin: Same objection.

The Court: Overrule the objection. Let it be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Defendant's Exhibit No. 10, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S #10

WITNESS MORRIS
MAY 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia
Jackson 5-7975

TO PILGRIMAGE PARTICIPANTS:

Still another letter before we depart for New Orleans! You will be glad to know that today we added the Rev. Robert Fortna of New York City to our number and I am sure you will share my great regret at hearing from our intended Chaplain, the Rev. C. Kilmer Myers, that he will be unable to accompany us. His telegram said only that he could not come and would explain why in a subsequent letter. He had forewarned me in July that there was an outside chance a new child they are adopting would arrive at just this time. I know that he would encourage us onward and that his prayers will go with us although he cannot [fol. 359] come.

Let me repeat—we are to be at the Dryades Street YMCA, 2222 Dryades Street, New Orleans 13, La., by 6:30 P.M. on Monday, September 11th. Because of the tension in New Orleans connected with the opening of school this week I would suggest that you go quickly and quietly to the YMCA and avoid any challenge to anything should something arise. I was called today by CORE and advised that the mayor of New Orleans has announced a very firm policy with regard to persons on either side of the issue. Even if there were no provocation on our part it would serve to our disadvantage to be called in question as likely disturbers of the peace when they are trying to open their schools on a desegregated basis. If you arrive in a group it would be well to disperse en route to the YMCA, but use your best judgement.

I should have submitted the enclosed to you sooner but my determination to prepare such a draft has grown out of my decision not to issue a final release on plans nor reveal names or itinerary in advance. Also, I felt we needed something comprehensive as possible in interpretation of our entire plan. Please examine it carefully. . . . .if I receive no collect phone calls or telegrams in strong objection to all or a part of this statement I shall send it on Saturday to all bishops and to limited press media as a *draft* of what the group will consider for adoption on Monday night as our message to General Convention. If anyone calls me on it I shall not send it out as the suggested draft but we will [fol. 360] weigh it Monday evening.

At this point I would suggest that we stay over Tuesday night in Jackson before attempting departure the next day to Birmingham. The *p one* number of Tougaloo Southern Christian College is EM 6-3425. I have been in contact with Dr. A. D. Beittel, the President, whose phone is EM 6-8242. You can give the numbers to your family as where you could possibly be contacted on Tuesday night.

My records indicate that we will have 27 men in the group with the possibility of one more I am listing as tentative. The right men can be accepted until the last minute if space remains.

Faithfully,

/s/ J. Morris
John B. Morris

Q. The organization ESCRU, of which you are executive director, is not an official organization and/or part of the Episcopal Church, is it?

Mr. Rachlin: Objection. I don't see the relevancy of the question.

The Court: Overrule the objection.

A. It is not an official organization of the Episcopal Church. It is an organization within the Episcopal Church. I can explain what this means, if you want.

[fol. 361] Q. It has no authority to speak for the Episcopal Church, does it?

A. It has no authority to speak for the Episcopal Church. That is right.

Q. Was your counsel, Mr. Rachlin, at Tougaloo Tuesday night, September 12, 1961?

Mr. Rachlin: Your Honor, at this point may I request that you advise Mr. Morris if he wants to that he may choose to exercise—

The Court: Yes. I give you the same advice. If Mr. Rachlin was your attorney, you can claim privilege and refuse to answer it on that ground. It is up to you to decide whether you want to claim the privilege or want to answer the question.

The Witness: Thank you, Your Honor. I can answer the question without difficulty.

A. He was not with us at Tougaloo that evening.

Q. Did you confer with him in Jackson or at any place on either September 12th or September 13th?

A. No, I did not confer with him on September 12th or 13th. He was in New York then. I don't know where. He was not here.

Q. I believe you have stated in your deposition a number of times and probably on this trial that your group which [fol. 362] went to the Trailways Bus station were 15 in number?

A. That is correct.

Q. Actually, they were 17 in number, were they not, including Reverend Boyd and Reverend Zimmer, who went there as observers?

A. We discussed this in part. Our group was 15 in number, and this division of our number, as we discussed earlier, Fathers Boyd and Zimmer were present in the terminal and we have one of them here as a witness that will be called later.

Q. His presence, those two men's presence in the terminal, was by prearrangement, and you knew they were to be present, didn't you?

A. I knew they were to be present. That's right.

Q. You knew there were to be 17 members of the Episcopal clergy in your group in the terminal at the time, didn't you?

A. I did.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Rachlin:

Q. Now, Reverend Morris, Mr. Watkins has submitted in evidence Exhibit 7, and I call your attention to Page 3, beginning on the end of the fourth line. I ask you to look [fol. 363] it over and read the sentence out loud and explain the meaning of it.

A. Page 3?

Q. Line 4, beginning here near the end of the line.

Mr. Rachlin: May I point it out, Your Honor?

The Court: Yes, sir.

Q. Beginning "Let me. ." Read that to yourself and then read it out loud and explain the meaning.

A. I said in this letter to those who were to go on the pilgrimage, "Let me remind you, however, of the possibility that the ICC might rule favorably before the time of our journey and I sincerely hope they will. I think that we should hope for the changes that mean no jail—not because we aren't prepared to go, but so that the barrier might simply fall for the benefit of everyone."

Q. With reference particularly to the words concerning "no jail," I wish you would explain that in light of the questions of Mr. Watkins asking you this morning about the desire to go to jail.

A. We had no desire to go to jail. We felt the call in this religious pilgrimage to a commitment that involved a journey where the possibilities of jail were always present in the South, but we hoped and prayed they would not develop so that we would be taken to jail. We had an [fol. 364] itinerary, a purpose, and a message to our church, and a destination in Detroit, and the witness is significant, the message we prepared in New Orleans, it was all there and of substance and validity in its own right, and did not require jail; and as said in the message that we drafted in New Orleans, we were priests of the Church of God in this particular expression of it, the Episcopal Church, and we felt it to be disobedient to Christ to be separated by race as we went in any point in the course of this pilgrimage, and therefore we would not separate by race. We were prepared to be supportive of the Freedom Riders by in no wise adjusting our group pattern to the community, to the mores of the community, region, any more than the Freedom Riders did, so at one point then we risked the same possibilities of arrest that Freedom Riders may have risked, but we said here that we hoped that even this late—because we were arrested some several weeks—I don't know how long, but some time after any Freedom Riders were arrested. We were arrested in September, and we hoped all the while that the ICC might hand down a ruling, which it did hand down, I think, ten days after we were arrested but not in time to avert our arrest. Of course, [fol. 365] it wasn't known it would be handed down.

This is repetition of what I said earlier, but we had no desire to be arrested.

Q. Then I take it your objective in coming to Jackson was not to go to jail. Is that correct?

A. That's correct.

Q. Was Jackson the end point of your trip?

A. No, it was not.

Q. Was it ever at any time the end point of your journey?

A. No. The general convention of the Episcopal Church was the announced and intended destination in Detroit from the beginning.

Q. Did you and your organization, which has been referred to, have an exhibit ready to be opened and displayed in the convention hall at Detroit?

A. We had a large placard showing a figure of Christ on the cross with His body bisected through by barbed wire upon which is emblazoned the words "Segregation and Separation," and this said in symbolic terms what we feel the issue to be, within the church especially; and on the other side of the placard there was a picture of our Lord with two persons kneeling in harmony and holiness before Him in a harmonious state, and this said something about, [fol. 366] symbolically, our hope for the church where segregation and separation would not play a part. This was our message. Symbolically we prepared our message in words in New Orleans, and this was our destination.

Q. Now, many questions have been asked you about the Episcopal Society for Cultural and Racial Unity, but I regret not having heard a question about what it stands for. I wonder if you could tell us briefly what it stands for, particularly, you as a born and bred southerner.

A. The Episcopal Society for Cultural and Racial Unity is a group of Episcopalians, bishops, clergy, lay persons, endeavoring within part of Christ's church, the Episcopal Church that we are placed in, to be a little more honest, a little more true to the commitments we have made and believe God asks of us, and those commitments, we believe, compel us to disregard color in the treatment of persons within the church and within the community. We believe it to be unjust, unlawful in terms of the eyes of the Federal Government, immoral in the eyes of God, and disobedient before Christ, and we formed this organization and formed it within this denomination to try to provide some leadership within the Episcopal Church for a greater commitment to these teachings and values. We are concerned for [fol. 367] these things *inthe* theological and religious context. We believe we have been hearing too much of only court orders and rulings, and while we are respectful of the majesty of the Federal judiciary we believe that for Christians there is a deeper reason for being concerned for desegregation. This reason, we believe, is a religous one, a theological one, and we are trying to speak the word and provide some leadership within the church that will take people to the deeper concerns that are caught up in our baptismal vows, as I read earlier. And we are then trying to work in this way within the Episcopal Church north and south, and while our office is in Atlanta, we by no means have any feeling that the problem is limited to the South; we know they are just as grievous in the North and the church too in the North. Indeed, as a southerner, I have some feeling that ultimately we will work these problems through more adequately in the South than in the big cities of the North. But to point out that there are problems in the North is no reason for not dealing with our problems down here. Our concern though is a religious one, primarily, as is evidenced in the itinerary of our pilgrimage.

Q. Now, Mr. Morris, Mr. Watkins asked you a moment [fol. 368] ago whether your organization is an official organ of the Episcopal Church. May I ask this: Is there anything inconsistent about the position of your organization, the Episcopal Society for Cultural and Racial Unity, which is inconsistent with or in opposition to the teachings of the Episcopal Church of the United States?

Mr. Watkins: We object to that, Your Honor. He has already said that his organization was not authorized to speak for the Episcopal Church. So how can he now speak for the church by adopting the things for which his organization stands?

The Court: I'll overrule the objection if he knows.

A. We do not—

Q. Did you get the question?

A. I did. We do not presume to speak for the Episcopal Church. We speak for some Episcopalians, and within the church and as active churchmen, and we do not believe that we have anything new to say about Christ's will and teaching regarding human relations and love one for another.

We only believe that we are saying again and again what the church's position is, and indeed and in fact a study of the resolutions and pronouncements of the Episcopal Church officially will bear this out, I believe, that we have [fol. 369] not said anything new; we are just saying it again and again that we might not forget it, might not leave it up there to admire. We are an unofficial group like a great many other groups within the Episcopal Church and within every church, which are groups of churchmen who are gathered together for a particular concern. We have in the Episcopal Church other such groups that have their concerns that are all valid and necessary. The Overseas Missions Society is a group that deals with overseas missions. We deal with cultural and racial unity, which in our mind means harmony and wholeness—not uniformity, but all that I said a moment ago about our basic purposes. We are not official, and yet we are increasingly reflecting the sentiments of a great many Episcopalians. Witness the fact that of our 125 or so bishops, some 30 or 40 *aremembers,* of our 8,000 or so clergy, some over 900 are members, and then many lay members.

So we do not speak for the Episcopal Church, but we speak for some Episcopalians.

Q. Now, a moment ago Mr. Watkins returned to me one of the documents that Judge Mize said might be competent if it were offered.

[fol. 370] I am going to ask you to—This document apparently bears the date at the bottom 9/18/61, and it's entitled "Statement by Rev. V. Powell Woodward For Fifteen Episcopal Ministers."

In view of what Judge said earlier, I wonder if you would take the trouble, Mr. Morris, to read this statement aloud.

Mr. Watkins: If it please the Court, I am going to object to that statement. I didn't use it for reasons that it is a statement of a person who is not present. I don't think Mr. Rachlin has the right to use it for the same reason.

The Court: Let me see it again.

Mr. Watkins: In addition, it is a statement made after the occurrence.

The Witness: May I comment on it?

The Court: Let me see it first.

(Same is handed to Court)

The Court: Sustain the objection.

Mr. Rachlin: May I make an offer of proof?

The Court: Yes, I am going to let it be marked but excluded. I will give my reasons for it, but I am not going to give all. The only reason I thought it would be competent [fol. 371] if counsel opposite desired to use it would be that there is a statement in there which I construed to be a statement against interest, and he could have introduced it; but everything else there is self-serving, and you know, as a lawyer, that every self-serving declaration is not competent in behalf of the fellow making the statement. So I will let the court reporter mark it, and sustain the objection so it will become a part of the record.

Mr. Rachlin: May I make an offer of proof and ask the witness to read it?

The Court: No, sir. You have your record complete on it now, and it's not permissible for you to let him read it.

Let the reporter mark it.

(Same was marked as Plaintiff's Exhibit No. 3, which Exhibit follows here below:)

EXHIBIT PLAINTIFF'S #3

WITNESS MORRIS
May 15 1963

STATEMENT BY REV. V. POWELL WOODWARD FOR FIFTEEN EPISCOPAL MINISTERS

We now continue on our way to the General Convention of the Episcopal Church in Detroit. Two of our members will remain in jail for a time.

[fol. 371a] We intend to appeal to the United States Supreme Court, if necessary, to obtain justice. We believe that our counsel showed conclusively that there is no evidence to support our conviction by the City of Jackson on a breach-of-peace charge. We hope that Governor Barnett will take this time, proclaimed to be "Constitution Week" by President Kennedy, to consider how his authorities have repeatedly ignored the Constitutional rights of peaceable racially-mixed groups such as ours.

We do not believe that Judge James Spencer is competent to find us guilty of violating Episcopal Church law. His venture into canon law obscured the criminal issue and endangered our American heritage of separating Church and State. We hope that he has now noted Thursday's statement by our Presiding Bishop, the Rt. Rev. Arthur Lichtenberger. The bishop praised our action is "an attempt to bear witness . . . to the whole country what the position of the Episcopal Church is."

• • • • •

[fol. 371b]

PRAYER FOR COURTS OF JUSTICE

"Almighty God, who sittest in the throne judging right; we humbly beseech Thee to bless the courts of justice and the magistrates in all this land; and give unto them the spirit of wisdom and understanding, that they may discern the truth, and impartially administer the law in the fear of Thee alone; through him who shall come to be our Judge, Thy Son, our Saviour Jesus Christ." Amen.

Book of Common Prayer, pp. 35-36.

9:18:61

* * * * *

Mr. Rachlin: There is one thing I do want to say. Your Honor earlier today referred to res gestae, and this document is part of the res gestae.

The Court: Oh, no. This is made after all this. Res gestae is something that occurs there on the spur of the moment. I adhere to my ruling. It is a part of the record now.

Q. Now, Mr. Morris, a term has been used during the course of your cross examination and that of Father Jones [fol. 372] yesterday about non-violence.

I wonder if you would explain to us what that term means?

A. I'm not sure I'm an authority on the subject of non-violence in its classical or technical sense as it's considered to be a concept from Ghandi, in present day terms. Dr. Martin Luther King is one of our foremost scholars of Ghandi, in perspective, but I know as a Christian that one, under obedience to God in Christ,—that I am compelled to be, so much as life in me, non-violent in my relationships with other people, to realize that sin in all of us will prompt us to be violent, to be selfish and self-centered, and that through Christ we might control this and be non-violent. But in more practical terms in the area of witness or protest, it means plainly that if somebody hits you, you don't hit back; and in our terms in our pilgrimage, it meant that we are to be under the discipline as Christians and in any way you look at it not to retaliate in any way or any wise.

Q. So under no circumstances, even if force were used against you, would you use force? Is that correct?

A. We would hope to be so commanded by Christ at that point not to.

[fol. 373] Q. And when you were in the bus station on September 13, 1961, did you obey this belief, Christian belief, of non-violence?

A. There was no violence that tested our metal in that regard.

Q. There was no violence on anybody's part? Is that correct?

A. That is correct.

Q. Was there the threat of violence?

A. No.

Mr. Rachlin: No further questions.

The Court: You may stand aside.

(Witness excused)

[fol. 374]

Robert L. Pierson, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. Father Pierson, will you tell us where you live, please?

A. White Plains, New York.

Q. And give your exact residence.

A. Nine Oakley Road, White Plains, New York.

Q. With whom do you live?

A. My wife and four children.

Q. Four children?

A. Yes.

Q. Give us a little of your educational background?

A. The usual public schools, public school training—grade school, high school—and a short time at Lawrence College before I *servic* in the Air Force. Finished college at the University of Wisconsin, and went to Garrett Biblical Institute for a very short time, and finished seminary at Nashotah House, Nashotah, Wisconsin.

Q. When did the time come when you were ordained as a priest of the Episcopal Church?

A. 1954.

Q. And you have been a priest of the church ever since?

[fol. 375] A. Right.

Q. Now, were you in the City of Jackson, Mississippi, on September 13, 1961?

A. Yes.

Q. On the morning of September 13, 1961, did your business carry you to the Continental Trailways bus station near this courtroom?

A. Yes, it did.

Q. Do you recall approximately what time it was that you arrived at the bus station?

A. About 11:25.

Q. Were you accompanied by others?

A. Yes.

Q. How many others were there with you?

A. There were a group of 15 of us.

Q. About how far from the entrance to the bus station did your taxicab stop to let you off?

A. About 50 or 60 feet, 60 or 65 feet.

Q. Did all of you proceed then forthwith to walk to the bus station, into the entrance to the bus station?

A. Yes.

Q. Approximately how long did that take?

A. I would say not more than a half a minute, 30 or 45 seconds.

[fol. 376] Q. Now, while you walked from the taxicab to the entrance to the bus station, did you observe any large number of people follow you and your fellow priests?

A. No, we did not.

Q. Did there come a moment when you entered into the bus station?

A. I'm sorry?

Q. Did you venture into the bus station?

A. Yes.

Q. Will you describe then what happened as you walked after you walked into the bus station.

A. We went in in single file and stretching out almost the length of the distance from the entrance to the lunch counter entrance; I believe four or five or six of the men got into the lunch counter and were told to hold it up there, to come on back out.

Q. Do you recall who said that?

A. One of the officers. I can't remember which one.

Q. Was it one of the two gentlemen? Indicating Officers Griffith and Nichols to my right.

A. Either Officer Griffith or Officer Nichols.

Q. Did you observe both of them there at that moment?

A. Yes, I did.

Q. When did you first see them after you entered the bus station?

[fol. 377] Do you recall?

A. One was right at the entrance. Both may have been at the entrance; one—

Q. Don't speculate. Just what you saw and observed and heard.

A. All right. One was right at the entrance and one was at the entrance to the lunch counter. Now, I'm not speculating; I'm just saying that one may have moved from the entrance of the terminal to the entrance to the lunch counter as he saw us move.

Q. Now, as the 15 of you entered, did you enter toward the rear of this group or were you toward the front?

A. I was about two-thirds of the way back.

Q. So that approximately ten had entered previous to you? Is that right?

A. Right.

Q. Will you describe what happened after one of the officers said something?

A. One said, "Hold it up there, right there," and he said, "Go on back out" to those who had gone into the lunch counter, and told us that we would be—asked us to move on, I believe was the next thing.

Q. When he spoke to you, which direction were you facing?

A. Facing toward the lunch counter, but I can't say what [fol. 378] direction that is.

Q. Did you observe any substantial number of people following you into the bus station?

A. No, no one followed us in except there may have been one or two getting out of taxicabs just about the same time we did, but no extraordinary group.

Q. Now, at the time that one of the officers spoke, did you hear any unusual hubbub in the station?

A. No, sir.

Q. Did you see any unusual hubbub in the station?

A. No, sir.

Q. Did any person in the station say anything of a threatining nature to you or any of your fellow priests?

A. No, sir.

Q. Did any person in the station make any threatening gesture to you or your fellow priests, so far as you know?

A. No.

Q. When you walked in, did you observe the demeanor of your fellow priests as they entered into the station?

A. Yes.

Q. Will you describe it?

A. Was perfectly orderly.

Q. Did they make any unusual noises?

[fol. 379] A. Unusual in the—

Q. —Loud voices?

A. No.

Q. Did they make any threatening gestures to anybody?

A. No.

Q. Now, would you proceed and pick up from the point where the officer called the people who entered into the restaurant back. What happened thereafter?

A. He was telling us to move on, and we told him that we wanted to get lunch, and he said again, "I'm telling you to move on." We said we were interstate *travalers*; we had tickets to Chattanooga. He said again to move on, and we once again offered a statement of our situation in hopes that we might have some communication with the police officer regarding our circumstances, but he simply said after the third time—after having told us to move on three times, he placed us under arrest.

Q. Now, where were you going, or what was your business in and around the vicinity of Chattanooga?

A. Around the vicinity of Chattanooga, we had plans to visit several church schools in that general area of Chattanooga.

Q. Chattanooga, of course, is in Tennessee?

A. Yes.

[fol. 380] Q. Do you recall which officer it was who said you were under arrest?

A. No, sir.

Q. Was it one of the two officers who are defendants here in this case?

A. It was one of the two.

Q. What happened thereafter?

A. After having been placed under arrest, we remained in our places, said a couple of prayers. By that time, by the time we had finished with this, Captain Ray, then Captain Ray, now Chief Ray, had come to the terminal.

Q. Now, during this period from the moment you were placed under arrest and until the moment then Captain Ray entered the station, did anybody in the station indicate any hostility towards you priests?

A. No.

Q. Did anybody say anything of a hostile nature?

A. No.

Q. Did crowds gather in a hostile manner inside the station?

A. No.

Q. Did you happen to see Captain Ray enter the station?

A. No, I didn't.

Q. When did you first see him?

[fol. 381] A. It was as though he had come from a side door and was standing right before us. I don't recall having seen him until he was right before us. I may have been looking the other way too.

Q. Did he speak to either of the other two officers who were there?

A. I don't recall.

Q. Did they speak to him?

A. I don't know.

Q. Did you see whether he spoke to them?

A. I did not see.

Q. You were looking at him, weren't you?

A. As I say, I may have been looking the other way. He appeared very suddenly, actually.

Q. What did he say to you?

A. I believe his words were, "I am going to see that you get on the bus. If you come with me there will be no trouble," or some such thing. That was the substance of what he said.

Q. What did you say?

A. We said once again what we had said to the arresting officer, that we were interstate travelers and that we had come to get a sandwich, something to eat, before starting on this journey to Chattanooga, and we wanted lunch.

[fol. 382] And he said again that he would—there was some discussion at this point—we were interstate travelers and wanted to get on the bus and wanted to have our lunch first, and he said again, a second time, that he would see that we got on the bus safely if we would come with him.

Again we said we wanted lunch. Then he repeated more or less what the first arresting officer had said, "Move on," and having said that three times, he placed us under arrest, the second time.

Q. Did he take you anywhere?

A. We stayed there until the wagon had been called for. We went out behind the bus terminal into a loading zone, waited for the patrol wagon to come; we were loaded into the patrol wagon and taken to the city jail.

Q. Was there any unusual number of people out back there were the buses loaded?

A. There was a group there; however, I would not say it was a sizeable group, having been in the bus terminal yesterday at almost exactly the same time that we were there September, 1961. Yesterday I counted 28 people inside the terminal and maybe half that many outside, and I would say there was about that many that day.

[fol. 383] Q. There was nothing unusual in the appearance on September, 1961?

A. No.

Q. Did you eventually go into the paddy wagon?

A. Yes.

Q. You were escorted into it?

A. Escorted in a sense. The back entrance was indicated to us.

Q. Where were you taken?

A. To the city jail.

Q. By the way, was the back entrance locked or was it open? Were you free to go?

A. Into the paddy wagon?

Q. Out of the paddy wagon. Were you free to leave the paddy wagon, or was it locked?

A. I don't know.

Q. You didn't try the door?

A. I didn't try the door.

Q. Then you were taken to the jail?

A. Right.

Q. What happened to you when you got to the jail?

A. Taken upstairs on the elevator and sent to a conference room and brought in one by one to be booked and have our personal belongings, valuables, taken and checked, pre-[fol. 384] sumably for safekeeping. Then we were fingerprinted, and we had those photographs taken with numbers underneath to identify us.

Q. Have you ever received those photographs back?

A. No, I haven't.

Q. Have you ever received your fingerprints back?

A. No, sir.

Q. Now, after this was done, what happened?

A. We were then allowed to make a phone call and sent up to our cells, to the cells which had been assigned to us.

Q. Do you recall how long you were in the jail before you had a trial in Judge Spencer's Court?

A. We went to jail Wednesday about noon, and we were tried Friday about ten o'clock in the morning.

Q. Were you present in the courtroom at the trial before Judge Spencer?

A. Yes.

Q. Had you pleaded guilty or innocent to the charges against you?

A. We pleaded not guilty.

Q. Do you recall what Judge Spencer's verdict was in your presence?

A. The verdict was guilty.

Q. Did he sentence you?

[fol. 385] A. Yes.

Q. What was the sentence?

A. The sentence was four months and $200 fine, or six months and six days, I believe is the way it worked out.

Q. And what happened after sentence was passed?

A. We were sent back to our cells.

Q. How long did you remain in jail?

A. Until the following Tuesday.

Q. Then you were bailed out?

A. Yes.

Q. After you were bailed out, where did you go?

A. We resumed our interrupted journey; however, because of the delay caused by our being imprisoned, we couldn't stop at Chattanooga and Sewanee and other places along the way; we went directly to Detroit.

Q. What was going on in Detroit at this time?

A. The general convention of the Episcopal Church.

Q. What does this mean? Do you know?

A. It's the meeting of the delegates, those responsible for the government of the American Episcopal Church. It meets every three years and takes up the business, administrative business, of the church.

Q. Was it ever your intention to go to jail in Jackson?

[fol. 386] A. No, sir, it was not.

Q. Did you want to go to jail?

A. No, sir, I did not.

Q. Did you enjoy your stay in jail?

A. No, I did not.

Q. Was your freedom restricted by being in jail?

A. Yes, it was.

Q. You weren't able to go out at will, were you?

A. No, sir.

Q. Did you have the opportunity to eat whatever food you wanted, or did you have to eat what was served you?

A. We never asked for a change of diet. I don't suppose that we would have been necessarily catered to. We ate what was set before us.

Q. By the way, have you ever been in jail before?

A. No, sir, I hadn't.

Q. Have you ever been in jail since?

A. No, I haven't.

Q. This was your one and only time? Is that right?

A. That's right.

Offer in Evidence

Mr. Rachlin: At this point I would like to offer the same letters on behalf of Father Pierson that I have offered on behalf of the others who testified.

[fol. 387] The Court: Let it be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Plaintiff's Exhibit No. 4, which Exhibit follows here below):

Exhibit Plaintiff's 4

Witness Pierson
May 15 1963

State of Mississippi
County of Hinds

I, H. T. Ashford, Jr., Clerk of the Circuit and County Courts, and custodian of the said records in and for the said State and County, hereby certify that the foregoing 8 pages contain a true and correct copy of all the pleas and proceedings had and done in the case of State of Mississippi vs. Robert Laughlin Pierson in the County Court of the First Judicial District of said County in said State, and being case No. 12936.

Given under my hand and the seal of the County Court of said County and State this the 8 day of May, 1963.

H. T. Ashford, Jr. Circuit and County Courts,
Hinds County, Mississippi
/s/ Robert E. Lilley D.C.

(Seal)

• • • • •

[fol. 388] No. 12,936

(Filed—Oct. 2, 1961)

October 2, 1961

County Court Clerk
Hinds County Courthouse
Jackson, Mississippi

Dear Sir:

Section 1205 of the Mississippi Code of 1942 provides that "The Justice of the Peace, or Mayor, or Police Court from whose judgment convicting of a criminal offense an appeal shall be taken, shall at once transmit to the Clerk of the Circuit Court the bond taken by him and a certified copy of his record in the case, with all the original papers in the case, as in appeals in civil cases."

In accordance therewith, I am enclosing herewith a certified copy of my record in the case of State of Mississippi versus Robert Laughlin Pierson, with all the original papers in the case to be dealt with according to law.

With very best regards, I remain,

Very sincerely yours,

/s/ James L. Spencer
Police Justice and Ex Officio
Justice of the Peace, City of Jackson,
Hinds County, Mississippi

JLS:ssw

• • • • •

[fol. 389]

(Filed Oct. 2, 1961)

IN THE POLICE COURT OF THE CITY OF JACKSON, MISSISSIPPI

STATE OF MISSISSIPPI DOCKET No. 19

vs.

ROBERT LAUGHLIN PIERSON PAGE No. 412

CERTIFICATE

I, James L. Spencer, Police Justice and Ex Officio Justice of the Peace, in and for the municipality of Jackson, Hinds County, Mississippi, do hereby certify that the attached and within:

1. Affidavit
2. Order for Cash Appeal Bond
3. Copy of Judgement
4. Notice from Sheriff
5. ——————
6. ——————

is a certified copy of my record in the case, with all the original papers in the case.

WITNESS MY SIGNATURE, this the 2nd day of October, 1961.

/s/ JAMES L. SPENCER
Police Justice and Ex Officio Justice of
the Peace, City of Jackson, Hinds
County, Mississippi.

• • • • •

[fol. 390]

(558-1)

General Affidavit

(Filed Oct. 2, 1961)

State of Mississippi
County of Hinds

This day personally appeared before me, the undersigned James L. Spencer, a Police Justice of the City of Jackson, and Ex-Officio Justice of the Peace of said City, J. L. Ray who, being by me duly sworn, makes affidavit that Robert Laughlin Pierson on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that a breach of the peace might have been occasioned thereby, did then and, there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there wilfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi.

J. L. Ray
Affiant

[fol. 391]
Sworn to and Subscribed Before Me this the 15 day of Sept., 1961.

/s/ James L. Spencer
Police Justice and Ex-Officio
Justice of the Peace

412

***

Page No. 412

Docket No. 19

State of Mississippi

vs.

Robert Laughlin Pierson

Judgment

(Filed Oct. 2, 1961)

This cause this day coming on for trial and the defendant being arraigned in court on a charge of violation of Section 2087.5 of the Mississippi Code of 1942, and having pleaded not guilty and the court having heard testimony and being of the opinion that the defendant is guilty, it is therefore considered by the court and so ordered and adjudged that the defendant Serve a jail term of 4 months and pay a fine of $200.00 and be committed to jail until paid.

Ordered and Adjudged, this the 15th day of September, 1961.
[fol. 392]

/s/ James L. Spencer
Police Justice and Ex Officio Justice
of the Peace, Hinds County, Mississippi

Disposition of Defendant: Mittimus to Sheriff

* * * * *

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON, FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON

vs.

ROBERT LAUGHLIN PIERSON

ORDER FOR CASH APPEAL BOND

(Filed Oct. 2, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, Robert Laughlin Pierson by and through his attorney, for authority to post a Cash Appeal Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve as surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, Robert Laughlin Pierson, be and he is hereby authorized to post a Cash Appeal Bond of Five Hundred ($500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

[fol. 393]

ORDERED AND ADJUDGED on this 18 day of September, 1961.

/s/ JAMES L. SPENCER
Municipal Judge & Ex-Officio
Justice of the Peace

Approved and agreed to:

(Signature illegible)

City Prosecutor

JACK H. YOUNG
Of Counsel for Defendant

• • • • •

Cash bond is accepted because Robert Laughlin Pierson is a non-resident of the State of Mississippi and knows no person within the State who has property and is willing to sign bond.

APPEAL BOND

(Filed Oct. 6, 1961)

No. 12,936
STATE OF MISSISSIPPI
County of Hinds

KNOW ALL MEN, That we Robert Laughlin Pierson Principal, and ——— and ——— sureties are held unto the State of Mississippi in the penal sum of ($500.00) Five Hundred & No/100 Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our [fol. 394] names this 18 day of September, A. D., 1961.

The condition of the above obligation is that the above named Robert Laughlin Pierson on the 15th day of September A. D., 1961, before the Municipal Court of the City of Jackson in and for the said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum of ($200.00) $200.00 and four months in jail dollars and all costs. And the said Robert Laughlin Pierson hath prayed an appeal of the said judgment to the next term of the County Court in and for said County and State.

Now, THEREFORE, If the said Robert Laughlin Pierson shall appear in person at the next term of the said County Court, and there remain from day to day and from term to term until discharged by law from the said charge, there then this obligation shall be void, otherwise it shall be in full force and effect and binding on all parties, joint and several, therein named.

Given under our hands, this 18 day of September 1961.

/s/ Robert L Pierson Principal
810 Fifth Avenue Surety
New York, N. Y. Surety

[fol. 395] The foregoing Bond was filed and approved this 19 day of Sept. 1961.

J. R. Gilfoy, Sheriff & Tax Collector
Sheriff of Hinds County.

By /s/ Fred Pickett, Deputy Sheriff.

* * * * * * *

(Filed Oct. 2, 1961)

Honorable James L. Spencer
Municipal Judge
Jackson, Mississippi

Dear Sir:

Pursuant to Section 1204, Mississippi Code of 1942, as annotated, I, the undersigned, Sheriff of Hinds County, Mississippi hereby advise you that I have taken a cash appeal bond from the following named individual, after having duly approved the same; that I have further turned over the said bond to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi.

I hereby notify you as Municipal Judge of the City of Jackson, Mississippi, that an appeal has been taken with regard to said individual and I direct you to send up all papers regarding said individual to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi, as if the appeal bond had been filed with you, from whose judgment the appeal was taken.

[fol. 396]

Name	*Date of Bond*
Robert Laughlin Pierson	Sept. 19, 1961

Thanking you for your compliance with this request, I remain,

Sincerely yours,

/s/ J. R. Gilfoy
J. R. Gilfoy, Sheriff
Hinds County, Mississippi

/s/ by Fred Pickett, D. S.

12936 **State of Mississippi**

vs

Robert Laughlin Pierson

It is ordered and adjudged that a Nolle Prosequi be and the same is hereby entered in the above styled and numbered cause on Motion of the City Prosecuting attorney

Russell D. Moore
County Judge

State of Mississippi,
County of Hinds

I, H. T. Ashford, Jr., Clerk of the Circuit Court in and for the said State and County do hereby certify that the above and foregoing is a true and correct copy of the original Minutes County Court and the same is of record in this office in Minute Book No. 21 at page 310

Given under my hand and the seal of the Circuit Court at Jackson, this the 7 day of May 1963

(Seal)

H. T. Ashford, Jr., Circuit Clerk
By /s/ Robt. E. Lilley D. C.

[fol. 397] Q. Now, Father Pierson, I take it that you appealed your conviction from Judge Spencer's verdict?

A. Yes.

Q. As a result and as a part of the business of the appeal, did you make two trips from your home to Jackson, Mississippi?

A. Yes—No, I didn't. I made—I'm sorry, I did. I made two trips.

Q. And you went back home?

A. Yes.

Q. And do you know what the expense of the trip from your home to Jackson, Mississippi, and back was?

A. It runs about $175 round trip, coach fare, with incidental expenses.

Q. And you did that twice? Is that right?

A. That's right.

Q. I take it you had no other actual monetary expenses beyond that? Is that correct?

A. No.

Q. Did you suffer any loss of income as a result of either your stay in jail or your trips back and forth to Jackson?

A. Not actually loss of income; certainly loss of productive time.

Q. Have you been the subject of any abuse or criticism as a result of your stay in jail?

[fol. 398] A. Out of a number of letters that I received, I could certainly find at least half a dozen references to my time in jail.

Mr. Watkins: We are going to object to this on the ground that those letters would be the best evidence.

The Court: Sustain the objection.

Mr. Rachlin: Your Honor, again I state it is not a question of the truth of the statement in the letters. It is the fact that he has been the subject of ridicule.

The Court: The letters would be the best evidence of whether or not it was ridicule or not. I will let him say he received about half a dozen letters, without disclosing the contents, because the contents of the letters would be the best evidence.

Mr. Rachlin: Your witness.

Cross examination.

By Mr. Watkins:

Q. Reverend Pierson, do I understand you have been an Episcopal minister since about 1954?

A. Since 1953, actually.

Q. And that would be a period of ten years?

A. Yes.

Q. How many churches have you served as the priest in charge, during that period?

[fol. 399] Mr. Rachlin: I object to the question, Your Honor, as being completely irrelevant. What difference does it make?

Mr. Watkins: He has gone into this man's background. I think I am entitled.

The Court: Overrule the objection.

A. One.

Q. For what period of time were you priest in charge of that one church?

A. I was priest in charge from March, 1955, until about a year and a half later, which would be about the Fall of 1956.

Q. Then you have served as a priest in charge of a church for one and a half years during the past ten years? Is that correct?

A. That is right.

Q. Were you gainfully employed at the time of your trip on this pilgrimage?

Mr. Rachlin: Your Honor, this is irrelevant on the question of damages. He has already stated that except for the travel, he suffered no monetary damage; and, therefore, the question is irrelevant.

The Court: He said he lost some compensable time, as I recall his answer. I'll overrule the objection.

[fol. 400] Q. Do you remember the question?

A. Was I gainfully employed? Yes—This would be September.—No, I was not gainfully employed.

Q. For the purposes of the trip, they were correctly stated, insofar as you were concerned, were they not, in Exhibit A to your deposition? Do you recall that document?

A. Yes, I do.

Mr. Watkins: It has been marked Defendant's Exhibit 1 here.

Q. Is that the document you say correctly reflects the purposes of the trip?

A. Yes, it does.

Q. As I understand it, the first stated purpose was to investigate segregation in your church schools. Did you do so?

A. I don't see the word "investigate" in here.

Q. Well, substitute—What was the purpose with reference to the church—

Mr. Rachlin: I think there is an obligation to read this document and not to mislead this witness.

Mr. Watkins: The witness has the document in his hand.

The Court: Overrule the objection.

A. You want me to state the purpose of our trip?

[fol. 401] Q. Yes, with reference to the schools.

Mr. Rachlin: I have my standing objection on this, don't I, Your Honor?

The Court: Yes, I'll let you have a standing objection.

A. I will state our purpose as being one of communication with our clerical brethren, our brethren lay and clerical in the South, and throughout the part of the country that we were to have traversed during our pilgrimage, communication in an attempt to understand their problems and to let them know that we were concerned with their problems, and to hope to share in their problems in some way.

Q. Did you visit any Episcopal school in the State of Mississippi?

A. We visited All Saints Junior College in Vicksburg, Mississippi.

Q. Is that a segregated school?

A. I believe it was then.

Q. Is it now?

A. I don't know.

Q. Did you make any effort to integrate that school on your visit?

Mr. Rachlin: I think the term "make an effort" is susceptible of many meanings, and I would like Mr. Watkins to be a little more explicit so the witness is able to answer the question properly.

[fol. 402] The Court: Overrule the objection.

Q. Did you make any effort to change that from a segregated school to an integrated school?

A. Depending on what you mean by "segregated" and "integrated," I could answer yes, we did.

Q. What effort did you make to change it?

A. We brought a group of 28 priests, some of whom were white, some of whom were Negro. If this constitutes integrating the school, I don't know, because I don't know what you mean by "integrating."

Q. Did you make an effort to change the rules and customs of that school by including as either students or faculty members both people of the Caucasian and the Negro races?

A. Certainly made an effort by persuasion to indicate our —I would say we made an effort by persuasion to do this. Yes.

Q. But not physically?

A. Well, we had tea at the headmaster's house as an integrated group. Now, again I say I don't know what you mean by the word "integrated."

Q. Did you attempt to forcibly change any of the rules, regulations or customs of that institution?

A. If the custom of the institution had in the past been [fol. 403] in the past to have segregated teas and segregated meetings on the campus, then we forcibly changed the pattern.

Q. I want to ask you, Reverend Pierson, if that identical question wasn't asked you on your deposition of February 15, 1961, in Jackson, and if your answer was not, "No," and nothing else?

I show you on Page 11 of your deposition the question and answer to which I refer.

A. It is on Page 11 of my deposition. I learned a lot about integration between that and Page 82.

Q. Please answer my question now as to whether you gave the answer "No" to that question.

A. That's right.

Q. —To that question on your deposition.

A. That's the answer I gave.

Q. Did you visit any other church school in Mississippi?

A. No, sir, we didn't.

Q. Was your visit to All Saints College your only purpose in coming to Mississippi?

A. May I correct my last statement? You said "church institutions"?

Q. No, sir, I said "schools."

A. Oh, schools. All right. No, we didn't.

[fol. 404] Now, the next question? I'm sorry.

Q. Was your visit to All Saints College your only purpose in coming to Mississippi?

A. No, sir.

Q. What other purpose did you have?

A. Our purpose in coming to Mississippi can only be taken in context of the overall purpose of the pilgrimage, wherein any one visit could not constitute the purpose of the entire pilgrimage.

Q. All right. You told us you came here for the purpose of going to All Saints. Now, what else did you come to Mississippi to do?

A. We came to visit— Well, actually, I believe—I realize I am bound to stick to my deposition, and I think what I recall having said at that time was that we don't—that we didn't know what we were going to do after we left Vicksburg, Mississippi.

Q. Which wasn't exactly the truth, was it, Reverend?

A. Well, the only reason I thought of it just now is because it is the fact; we didn't know what we were going to do after we left Vicksburg. We knew we were going to come to a small college outside Jackson, Mississippi, that night and would discuss our next move.

[fol. 405] Q. You knew what your next move was going to be, didn't you?

A. No, sir, we didn't.

Q. You mean you made that decision the night before, at Tougaloo?

A. Yes, sir.

Q. And that's the first time you knew anything about going as a Freedom Rider or like the Freedom Riders did to the Trailways bus station?

A. I wouldn't say it was the first time that the possibility of either going to the Jackson bus terminal or any of several other possibilities were mentioned; they were all mentioned.

Q. The pamphlet, Exhibit 1, which purported to state the purposes of your trip, criticized segregated housing near Detroit, did it not?

A. Yes, sir.

Q. Did you visit that place or do anything about that situation on your trip?

A. No, sir. As I stated before, our trip was interrupted. We were unable to carry out all of the projected, planned visits.

Q. You met the others in New Orleans by prearrangement, didn't you?

A. Yes, sir.

Q. Reverend John Morris, the Executive Secretary of [fol. 406] ESCRU, made the arrangements for the New Orleans meeting, did he not?

A. I believe so. They were under his authority.

Q. There were approximately 28 members of your group present at the meeting at the YMCA in New Orleans the night of the 11th, were there not?

A. Yes, sir.

Q. How many other people were present besides the 28 members of your group?

A. I would say about 35 in all. That would mean that there were eight others.

Q. Who were the others besides your group present?

Mr. Rachlin: Your Honor, I am going to object to this question. What difference does it make who was present at a meeting in New Orleans?

The Court: Overrule the objection.

A. I didn't know the names of any of the men present except the name of the Reverend Wyatt T. Walker.

Q. Was he an Episcopal minister?

A. No, sir, he was not.

Q. What was the purpose of his presence at your meeting that night?

A. Well, as I later discovered, he had been involved in [fol. 407] some of the demonstrations against sit-ins in certain parts of the South and, I believe, had been a Freedom Rider and had run into considerable—had first-hand experience of difficulties encountered in these sit-ins and Freedom Rides, and he told us a little bit about what might be expected if we encountered such things in the—during the course of our trip.

Q. He was there as an expert on recent racial violence and on recent Freedom Ride activities, wasn't he?

A. Well, I didn't know how recent any of them had been. I had no knowledge of this at that time.

Q. Did he advise you that night?

A. Yes.

Q. Was the advice that he gave to you helpful and needed advice, in your opinion?

Mr. Rachlin: Are we now involved in an analysis of the advice given by a stranger who is not a party to this proceeding, whether it was helpful or not? What difference does it make? Suppose it wasn't helpful?

The Court: I'll take your statement as an objection, and I overrule the objection.

Q. Was it helpful and needed advice?

A. It was helpful advice.

[fol. 408] Q. Tell us what he told you, Reverend?

Mr. Rachlin: I object on the ground it is hearsay, Your Honor.

Mr. Watkins: Your Honor, this is a meeting planning the trip to Jackson, being addressed by the—

Mr. Rachlin: —I object *tothat* statement. There is no evidence in this record of a meeting planned at Jackson. And how many times must Mr. Watkins be told that this is not the fact?

The Court: I'll overrule the objection. Be seated. (To witness) Answer the question.

Q. What did Wyatt T. Walker tell you that night at that meeting?

A. Well, he told us what would happen, told us a little bit about the history of the non-violent approach to integration activities, and told us how the idea had been developed, and what we might expect, and how we might face—

Q. What did he tell you that you might expect?

A. He said we might be hit on the head from the back, we might be knocked down, might have chairs thrown at us.

Q. Did he demonstrate some of those possible occurrences to you?

A. There was one demonstration that I recall. I don't recall any others. There may have been one or two others.

Q. What was the one?

[fol. 409] A. I think somebody got knocked off a chair. The surprise element was what he was pointing out to us, mainly, indicating to us that the first thing, the natural reaction, for a person when he is attacked from behind by surprise is to counter-attack, and that this is not what the non-violent theory teaches.

Q. At that time there had been a number of newspaper accounts relating instances of violence in the South, recent instances, with which you were familiar, had there not?

A. Yes, sir.

Q. And that included the recent violent instances of the Freedom Riders in Alabama, didn't it?

A. Yes, sir.

Q. When an Episcopal minister visits another state, is it customary for him to call on or contact the bishop of the state which he is visiting?

A. It depends on the nature of his visit, the purpose of this visit.

Q. Did your group get in touch with Bishop Duncan Grey when you came to Mississippi?

A. Yes, I believe we did.

Q. How?

A. By letter.

Q. Did you personally contact him after you got to Mississippi?

[fol. 410] A. I did not.

Q. In your talks with Bishop Co-adjutor John M. Allen at All Saints College, is it not a fact that he tried to discourage your group from coming to Jackson?

A. I don't recall him discouraging us from coming to Jackson. I don't remember.

Q. You do not remember, so you can neither admit nor deny that? Is that right?

A. That's right.

Q. You were familiar with the fact that news items on the radio and television announced the presence of your group in Jackson, were you not?

A. Yes, I did learn that, the morning that we were to go off to Chattanooga.

Q. Do you know why the presence of your group in Jackson was sufficient news importance to be on radio and television that morning?

Mr. Rachlin: There is no evidence in the record that it was on the radio and television that morning.

Mr. Watkins: He just said it was.

Mr. Rachlin: He didn't say that morning. That was never the question.

The Court: Very well. Ask whether it was on that [fol. 411] morning.

Q. Was it on that morning?

A. I knew it was on the radio that morning, but I did not know whether or not it was on television that morning.

Q. Now, do you know why your visit was of sufficient news interest to be on radio that morning?

A. No, sir.

Mr. Rachlin: Object to the question. It requires a mental process, which is inadmissible in evidence.

The Court: Well, I don't know whether it would be or not. It is a question of whether or not he knows of his own personal knowledge. But he answered that he didn't know.

Q. Did those broadcasts that you heard that morning make you apprehensive?

A. Somewhat apprehensive, yes.

Q. Why?

A. Because, as has been pointed out in testimony, I realized that we were an integrated group traveling in certain parts of the country where, as I had learned before, integrated groups are not welcomed by a very small but vociferous minority of the population, and I was somewhat apprehensive about this small, vociferous minority.

[fol. 412] Q. Before coming to Mississippi, didn't you advise your wife that you had been accepted for a Freedom Ride?

Mr. Rachlin: Your Honor, I object.
The Court: I sustain the objection to that.

Q. You knew, Reverend Pierson, that hundreds of Freedom Riders had visited Jackson before your group got here?

Mr. Rachlin: I want the question clarified that there is to be no necessary connection between the group of which Father Pierson was traveling and the Freedom Riders, as has been described innumerable times in the testimony.
The Court: Overrule the objection.

A. I learned later, I believe. I'm not sure just when this knowledge became—when these facts came to my attention. I had, of course, read of some disturbances in Jackson, but I must be frank to say that I didn't know very much about Jackson; in fact, I didn't even know where it was. I'm ashamed, in the light of the fact that it's the crossroads of the South, according to Jimmy Wade, I'm ashamed to say I didn't know where it was. That's how little I knew about Jackson, as compared to other southern cities. So I can't say when I knew that there had been violence in Jackson.
[fol. 413] Q. Did you openly endorse the purposes and activities of those groups that called themselves Freedom Riders?
A. No, sir.
Q. Did you disapprove?
A. Disapprove of what?

Mr. Rachlin: —Wait a minute. Your Honor, are we going to the negative concepts of what a man thinks? Is that what kind of testimony we?—
Mr. Watkins: I'm not asking what he thinks. I'm asking what he said.
The Court: Overrule the objection.

Q. Did you disapprove?
A. Disapproved of—?

Q. —the activities or purposes of the Freedom Riders in Jackson?

A. I've never disapproved of the purposes. I have disapproved of some of the activities, which is why I couldn't answer yes to the first question.

Q. You recognized that your presence in Jackson would be regretted by some, didn't you?

Mr. Rachlin: I'm sorry, I didn't hear you.

(Question was repeated)

Mr. Rachlin: I think that question has to be made more specific, and I would like—

[fol. 414] The Court: —Very well, I will sustain the objection to that, whether it was to be regretted or not.

Q. Even the printed statement of your reasons for your visit contain that statement, don't they, Reverend Pierson?

Mr. Rachlin: Now, just a moment. There is no proof that he wrote that statement or had anything to do with the preparation of it. I object to the question.

Mr. Watk*in*: Your Honor, he has adopted it as a statement of the purposes of their trip. If it's got an admission against interest in it, I think I'm entitled to the benefit of it, unless he wants to disavow it now.

A. I accept the statement.

The Court: Let me see the exhibits again. I haven't read it since the first day it was introduced.

Mr. Watkins: I'm referring to the underlined portion of the last.

(Same handed to Court)

The Court: I overrule the objection. The document shows the purposes of the entire group that made the trip, so I will overrule the objection.

Q. In the statement of the purposes of your trip, it states that, "In places where our coming may be regretted by [fol. 415] some, we will seek opportunities to confer with the clergy . . ."

Was Jackson one of those places that you were referring to?

A. May I go back to your question?

Q. Yes, sir. My question was—

A. —recognizing that it would be regretted,—

Q. —Didn't you recognize that your presence in Jackson would be regretted by some?

A. Which I wouldn't take as having the same meaning as "may be regretted by some."

Q. So your answer is that you do not—Your answer was to the negative to the question? Is that correct?

A. No, I didn't give an answer to it because I said, I began to say, that I didn't know what you meant by "recognizing."

I believe I have said earlier in my deposition that I had hoped that our action would not be regretted by any, but that it may be regretted by some.

Q. And in connection with that regret, or possible regret, you realized that you had beliefs which were strongly contrary to the beliefs of many people in this area, didn't you?

A. I don't know that.

Q. Let me ask you this: Do you believe in abolition of [fol. 416] all laws prohibiting intermarriage of persons of the Caucasion and the Negro races?

Mr. Rachlin: Your Honor, I object to that question. There is no purpose—What difference does it make what he believes? We're trying a case of what he did and what he didn't do and what the defendants did or didn't do.

The Court: Overrule the objection.

A. I would prefer to rephrase that statement, putting it into my own words, not because I know where it comes from, because in my deposition I wanted to rephrase it before I even knew where it came from.

Q. Let me ask you this question. I'm going to give you a chance to rephrase it any way you like, but in your deposition the specific question was asked you, "Do you believe in abolition of all laws prohibiting intermarriage of persons of different race?" and your answer was, "Yes, if such laws exist." Wasn't that your answer?

A. Yes.

Q. Is it still your answer?

A. Yes.

Q. In coming to Mississippi, were you familiar with the fact that Mississippi does have laws prohibiting marriage [fol. 417] between persons of the Caucasian and Negro races?

A. No, sir, I didn't know that.

Q. Before your arrest, the Jackson police officers asked your group to move on out of the station several times before they arrested you, did they not?

A. Yes, sir.

Q. Were those officers courteous in so doing?

A. Yes, sir.

Q. You refused to obey the orders given you at that time, did you not?

A. Yes—

Mr. Rachlin: —Which one? There were two sets of orders.

Mr. Watkins: I'm referring to the first orders given by Officers Nichols and Griffith.

A. Yes, sir, we refused.

Q. Subsequently, Captain Ray arrived and asked your group again to move on out of the station, several times, didn't he?

A. Yes, sir.

Q. Was he courteous in his request?

A. Yes, sir.

Q. You refused to obey Captain Ray's orders, did you not?

A. Yes, sir. I would say that we refused to obey that [fol. 418] order. However, implicit in that order is another order, I believe, and we recognized this, as we were given a choice of two things to do, both of which were commands on the part of Captain Ray, and we chose the one rather than the other.

Q. You knew that the refusal to obey the police orders would result in your arrest, didn't you?

A. Yes, sir.

Q. What attorneys were representing you in your trial in the municipal court in Jackson?

A. What attorneys?

Q. Yes.

A. Mr.—I gave it on my deposition. I can't remember.

Q. Mr. Jack Young?

A. Mr. Jack Young.

Q. And Mr. Carl Rachlin?

A. And Mr. Carl Rachlin.

Q. Both of them had previously represented many Freedom Riders in that court, had they not?

A. I do not know.

Q. Who furnished their services?

A. Their services to me?

Q. Yes.

[fol. 419] A. Mr. Rachlin was a New York attorney who had been contacted by Mr. Morris. That is all I know.

Q. You did not know that he was general counsel for CORE?

A. I knew that he had had some association with CORE at some time previous to that. I didn't know whether it was a lasting, whether it was a continuing relationship, or whether it had been a one-time relationship; I knew very little about Mr. Rachlin or Mr. Young.

Q. Did you or either of your attorneys request a trial by jury in the municipal court?

A. No, sir.

Q. Did you testify during your trial in the municipal court?

A. No, sir.

Q. Did you testify in your trial in the county court?

A. No, sir. May I add that we were—I was present at the testimony in municipal court, and we were not informed that we had the right to a trial by jury.

Q. You were assuming with New York and Jackson counsel that they knew what your rights were under the law, weren't you?

A. I'm assuming that, yes.

Q. At the time of your trip to Jackson, did what you considered racial discrimination exist in any form in the [fol. 420] county in which you were living at the time?

Mr. Rachlin: Your Honor, I really don't see the relevancy of that question.

The Court: Read the question back.

(Question was read by the court reporter)

The Court: Yes, sustain the objection.

Q. Going into a little more detail in your educational background, you received a BS Degree from the University of Wisconsin in 1949, did you not?

A. Yes, sir.

Q. Subsequently, you registered as a student at Garrett Biblical Institute, a Methodist seminary, did you not?

A. Yes, sir.

Q. You became dissatisfied and dropped out, did you not?

Mr. Rachlin: I am going to object to the question. I don't see that it makes any difference.

The Court: Overrule the objection. You went into his background, so I think he is entitled to go to reasonable length.

Mr. Rachlin: I'm not aware that I went into his background.

A. May I ask for a clarification of the word "dissatisfied"?

Q. If I have not used the right word, I would like for you [fol. 421] to substitute a word for me. I understood you to so testify on your deposition. Do you want me to read it to you?

A. Yes, sir.

Q. After testifying that you had gone to the Methodist seminary, you were asked this question:

"You disagreed with their teachings and dropped out, didn't you?"

Your answer was,

"I wouldn't say so much I disagreed with their teachings; I was dissatisfied with their lack of teaching."

Is that the correct answer?

A. Yes, sir, that is correct. That's why I wanted a clarification.

Q. Yes, sir. You did drop out of the Methodist seminary, didn't you?

A. Yes, sir.

Q. You subsequently entered an Episcopal seminary in Wisconsin, did you not?

A. Yes, sir.

Q. And you now find yourself in disagreement with the separate but equal practices of the Episcopal Church, do you not?

Mr. Rachlin: Well, I'm not aware that there is any such thing in the Episcopal Church, Your Honor. I don't think the question is appropriate.

[fol. 422] The Court: Sustain the objection on the ground that you assume a fact that has not been shown.

Q. Is it not a fact, Reverend Pierson, that separate but equal facilities exist in the Episcopal Church, both in the North and in the South, as stated in Exhibit 1 of your purposes for coming to Mississippi?

Mr. Rachlin: I'm going to object to that question because there is no proof that this is— The question Mr.

Watkins asks assumes that this is the general practice of the Episcopal Church. The document referred to said there were "instances" of this, and I don't think we can generalize from a specific.

The Court: If the witness knows, I will overrule your objection.

Q. Let me read to you from Defendant's Exhibit 1, and I will ask you to read it with me, please:

"Our 'separate-but-equal' parish system, as it exists in the North as well as the South, is partly a result of the housing pattern, but also a contributor to it."

Does the system referred to there exist?

A. Yes.

Q. Did it exist in your home county at the time of your trip to Jackson?

[fol. 423] A. Yes, sir. As I said in my deposition, it exists contrary to the teaching of the church.

Q. Don't you think, Reverend, that it would have been more appropriate for you to devote that time for the correction of that evil as you saw it existing in your home town county, rather than coming to Jackson, Mississippi?

Mr. Rachlin: Objection, Your Honor. I—

The Court: —Yes, sustain the objection.

Q. You have told me about the one church that you served in as priest in charge, have you not?

A. Well, I've been associated with a number of parishes; however, you limited the use of the term "priest in charge" —I have been assistant minister, I've been priest in charge, I've been vicar, I've been supply priest—so there is a very short time that I was a priest in charge.

Q. Referring to that church in which you did serve as priest in charge, its congregation was predominantly Negro and West Indian, was it not?

Mr. Rachlin: Objection, Your Honor. What difference does it make?

The Court: Yes, I think I'll sustain the objection to that.

Mr. Watkins: Your Honor, for the record, may I state [fol. 424] that I wanted to show that another race attempted to enter that church and that the Negroes of the church objected?

Mr. Rachlin: What difference does it make? Suppose it's true?

Mr. Watkins: Here's a man on a pilgrimage, a religious, segregation pilgrimage—

Mr. Rachlin: The Constitution of the United States—

The Court: I believe I'll sustain the objection. That is too far away.

Q. Reverend, you are familiar with the article entitled "Rebel in the Rockefeller Family," which appeared in the May, 1962, issue of REDBOOK, aren't you?

Mr. Rachlin: Objection, Your Honor. What difference does it make? He's not accountable for the articles that somebody may have written.

Mr. Watkins: Just a minute, Your Honor. He knows—

The Court: —I will overrule the objection and let him answer if he's familiar with it.

Q. Are you familiar with it?

A. Yes, sir.

[fol. 425] Q. I want to ask you if it's not a fact that before that article was published it was submitted to you for you to read and suggest any corrections that you wanted to make in the article?

Mr. Rachlin: Your Honor, this is not the best evidence in this article.

The Court: The question is whether or not it was submitted to him. I'll overrule the objection. I'll let him answer that question.

A. I'll say it caught up with me while I was on an extended tour throughout the West, the entire West Coast, and I caught it just in time to go over it very lightly, during which time I was also trying to prepare a half-way decent sermon for the next morning, and I sent it back special delivery after having hit the high spots.

Q. However lightly or thoroughly you went over it, it was submitted to you by REDBOOK magazine for your study and suggested corrections before they published it, was it not?

A. Yes, sir, suggested corrections. There was no guarantee at any time, as far as I know, that the corrections that I put in the margin would be adopted by the editors.

Q. Well, let me ask you if you suggested any corrections [fol. 426] in that article where, on Page 51 of the Magazine, it states, "Newspapers received the information with an interest almost equaling the Piersons'. 'Arrest Son-in-Law of Governor Rockefeller as Freedom Rider,' a New York morning paper proclaimed."

Did you object or ask for any change in that statement in the article?

Mr. Rachlin: I object to the question, Your Honor. This is not the best evidence.

The Court: Overrule that objection.

A. I have seen those headlines. I can't—I couldn't ask them to change a headline which had already appeared.

Q. All right.

A. That would be asking them to make—would be impossible to have corrected a direct quote from a newspaper headline, if it was a true quote.

Q. Now, on Page 129 of that magazine, that article purports to quote you in your conversation with Mrs. Pierson with reference to the nature of the trip you proposed to make to Jackson, and I want to ask you if you asked for any corrections in this report:

"And so at the end of August, while they were holidaying—"—

[fol. 427] Mr. Rachlin: Excuse me. I object to this. I think it is prejudicial.

The Court: Let me see it, Mr. Watkins.

(Same is handed to Court)

Mr. Rachlin: The entire article I consider prejudicial. He didn't write the article. The proof is clear he did not write the article and cannot be bound by what it says.

Mr. Watkins: We think the proof shows, Your Honor, that that was submitted to him and he permitted its publication without any change whatsoever, and it quotes him as referring to himself.

Mr. Rachlin: I'm not aware that REDBOOK magazine needs acceptance from Father Pierson as to whether it wants to print an article or not.

The Court: Just a moment.

I will sustain the objection to that, Mr. Watkins. It goes a little too far afield and in a foreign field that would unduly prolong the trial of this case, and, substantially, a lot of the things he has testified about here on the witness stand. So I am going to sustain the objection to the REDBOOK magazine.

You can offer it into evidence, if you want to, and make [fol. 428] it a part of the record, because it was sent to him and he read it and mailed it back. So if you want it made a part of the record, you may let it be marked as an exhibit but not received in evidence.

Mr. Watkins: I would like for it to be so marked.

The Court: Very well.

(Same was marked as Defendant's Exhibit No. 11, which Exhibit follows here below:)

Exhibit Defendant's #11

Witness Pierson
May 15 1963

The Crusading Minister in the Rockefeller Family

Robert L. Pierson broke with his background to become an Episcopalian, startled his friends by marrying an heiress and surprised even himself by going to jail for his beliefs

By Fern Marja Eckman

On September 13, 1961, Ann Rockefeller Pierson, tense and uneasy, waited for a phone call in her family's vacation cottage at Seal Harbor, Maine. She was expecting word from her husband, the Reverend Robert L. Pierson, an Episcopal priest.

The telephone rang. It was long distance.

"Well," said the familiar voice at the other end. "I'm in [fol. 429] the Jackson jail."

"You're what?" said Ann Pierson.

In Eagle, Wisconsin, in the living room of their century-old, yellow-brick house, Mr. and Mrs. Donald M. Pierson drowsily snapped on the television set for the midnight news before going to bed.

"And here," the newscaster intoned, "is the Reverend Robert Pierson in the town jail at Jackson, Mississippi." The Reverend Robert Pierson's parents, sleep forgotten, came to shocked attention.

Newspapers received the information with an interest almost equaling the Piersons'. Arrest Son-in-Law of Governor Rockefeller as Freedom Rider, a New York morning paper proclaimed. A major wire service in a bulletin from Jackson reported:

> "Police arrested 15 Episcopal ministers today when the biracial group attempted to enter a segregated restaurant at a bus station here. One of the clergymen jailed was the Reverend Robert L. Pierson of Evanston, Illinois, son-in-law of Governor Rockefeller of New York. Officers rounded up the ministers, on a 'prayer pilgrimage' from all parts of the nation, when they ignored orders to 'move on.'"

The headlines erupting across the country inevitably centered on young Pierson. Not only had he been selected by his clergymen companions as their spokesman, but his relationship to Nelson Rockefeller provided provocative [fol. 430] social and political overtones. Newspapers illustrated their stories generously with head shots of the photogenic Father Pierson in his neat clerical collar.

In upstate Rochester, New York, where Governor Rockefeller was addressing a town meeting, he was besieged by the press. Although he had never discussed the subject with his son-in-law, the governor issued a forthright statement:

"I admire the courage and dedication of these young people to the basic precepts on which this country was founded, and their dedication to the cause of making a reality out of those precepts."

Encouraged, the reporters asked if he intended to intervene on Pierson's behalf. Rockefeller in his reply indicated his understanding of his daughter's husband.

"He is one of a group who have dedicated themselves—for that I admire him—and he wouldn't expect any special treatment or want it," the governor said firmly.

Pierson himself was startled and dismayed by the avalanche of publicity. His instinctive reaction was to (Continued on page 122) recoil from the poised pencils, the massed cameras and the microphones. He wanted to shield the Rockefellers. But at the same time he was convinced that his cause was worthy and just. He decided finally that he would not seek the spotlight—but neither would he shrink from it. During his six days in jail he did not change [fol. 431] his mind. Nor has he changed it since.

The Reverend Cornelius DeWitt Hastie, of Boston, a traveling companion on the pilgrimage, recalls that Pierson never "mentioned his father-in-law at all." Father Hastie adds:

"As a matter of fact, until the arrests a number of us—myself included—had no idea he was related in any way to the Rockefellers. I'd even called his wife long distance to deliver a message from Bob without realizing who she was." All Father Hastie and his colleagues knew was that the boyishly handsome young clergyman named Pierson was passionately committed to the concept of fellowship and integration.

The 15 ministers, sentenced to four months in jail for "disturbing the peace," were eventually released from their cells on bond scrapped up by the Episcopal Society for Cultural and Racial Unity (known as ESCRU), which had sponsored the antisegregation pilgrimage and scheduled it to begin in New Orleans and end four days later in Detroit. Today Pierson's case, like that of the other 14, is on appeal. His trial is set for May 8th. Once again, then, he will have to journey south to Jackson. But Father Pierson does not regret his time of decision or lament his prison experience.

"Where lawlessness is upheld by se*gg*regationists," he says, "and there is an attempt on the part of integrationists to alter that situation, nobody can stand in the middle. The moderate who tries to stand in the middle is, in effect, going over to the side of lawlessness.

[fol. 432] "There is only one race," Father Pierson believes, "and that is mankind."

Looking back over his personal history, Robert Laughlin Pierson finds it difficult to trace the evolution of his philosophy. He protests amiably that his was an "extremely normal" upbringing.

Certainly his parents harbored no conspicuously advanced views on race. Gray-haired and gracious, the Donald Piersons are neither markedly liberal nor reactionary. They are inclined to advocate "separate but equal facilities" for Negroes, although it is clear that their son's stand has shaken them a bit. They display a measured pride in his courage to practice what he preaches but wonder aloud "whether the Freedom Riders are going about it the right way." While they claim little credit for his freedom from bigotry, it is clear that they always gave him liberty to find his own way.

"All through his life," says his mother, shaking her head fondly, "Bob was different from the others."

"Bob was always mature," comments his father with just a hint of boastfulness. "He always did his own thinking. And we let him do his own thinking. And the reason we did was because he usually did very sound thinking."

Bob, the Piersons' second child and first son, was born on the South Side of Chicago on March 9, 1926. His sister Jean, now Mrs. William Hirst, of Whitefish Bay, near [fol. 433] Milwaukee, Wisconsin, is six years his senior. His brother, Donald Martin Pierson, Jr., who is associated with a Denver firm, is five years his junior.

Their father, lean, laconic, kindly, somewhat more ruggedly individualistic in his opinions than his wife, was employed by one firm, the White Motor Company, for all but three years of his working life. He was hired as a purchase clerk in 1921; when he retired in 1959 he was manager of the Milwaukee branch.

Mrs. Pierson, short, plump, softly pretty, is a member of the Daughters of the American Revolution.

"I don't believe in everything they believe," she says a bit hesitantly. "My daughter dropped out because she was displeased by some of the things they did."

Both the senior Piersons are a little formal in discussing their middle child. They are at once more intimate, more involved and more relaxed in talking about Jean and Don. Even as a youngster Bob managed to move in his own orbit. As an adult his intellectual independence, his conversion from the Methodist to the Episcopal Church and his residence a thousand miles away from his parents, near New York City, seem to have placed him permanently beyond their full understanding in spite of his frequent home visits.

"When Bob went into the Episcopal Church," Mrs. Pierson admits bluntly, "I said, 'You know, Bob, our ancestors came over here just to get away from that.' And he said, 'Well, they got too far away.'"

[fol. 434] "I always tell Bob," says his father jestingly, "that the only difference between him and a Catholic priest is that he flunked Latin."

Going into the past, Mrs. Pierson recalls that Bob, named—perhaps prophetically—after his uncle, Robert Jerome Laughlin, a Presbyterian minister, was an unobtrusive, daydreaming little boy who loved to draw.

Bob Pierson remembers himself as "fairly quiet, never a great athlete, sort of fascinated by drawing and the graphic arts." Contemplatively he says, "I think I was a lot like my son is now. Joseph is only four, but he sits for hours and draws. He's not like the other three kids. Clare, the oldest, who is seven, likes to go horseback riding, and she'll say to Joseph, 'Won't you come?' And he'll say, 'No, I'm going to stay home and draw pictures.' I guess I was that way."

His parents confirm this. From the first he was more interested in block-building and blueprints of cars and boats than in games. ("You know those slick-looking cars you see around today?" his mother asks. "Well, Bob was drawing them when he was twelve or thirteen.")

As a schoolboy he tapped his parents' depression-strained resources as little as possible. Once, his father says, "the seat of Bob's pants had just about worn out, but he still kept saying he didn't need a new pair. We had to plead with him to buy clothes."

Considerate and peace-loving, he was a natural target for [fol. 435] youthful bullies. "Bob could fight, but he wouldn't," says Mrs. Pierson, still plainly perplexed by this early addiction to nonviolence. "He was the kid who wouldn't fight back.

He was consistently, even ostentatiously, nonathletic. "Why," says Mrs. Pierson, marveling, "Bob could just stand up and manage somehow to fall down and break his ribs."

"He liked to relax—he just about spent one whole summer in a chair," says his father, chuckling. "But he did play tennis later. And now he skis. . . . "

In 1934 the Piersons moved to LaGrange, a suburb west of Chicago. Seven years later, just six weeks after they had purchased their own home, Pierson was transferred by the White Motor Company to Whitefish Bay, where he remained until 1953, when he bought a 146-acre dairy farm in Eagle, now a nursery for 13,000 white pine trees.

Young Bob was the first Pierson to attend church in Whitefish Bay. "When he got back," says Mrs. Pierson, "I said, "Well, what was church like?' And he said, 'It was just like going to church in our living room.' "

His dissatisfaction has not dimmed. In Father Pierson's judgment, his religious training in childhood was negligible. "I'd say the kind of religious upbringing I had as a kid is the kind ninety-five per cent of all American children get," he comments.

[fol. 436] "We Americans generally feel that religion is our own business. Being our own business, it is therefore nobody else's. If it's nobody else's, you never talk about it. And so it's one of the things that's really never communicated to anybody else."

At 17 Bob Pierson entered Lawrence College, in Appleton, Wisconsin. Conscientiously, if not exuberantly, he put himself down for a solid array of pre-engineering courses, persuaded that his "bent was not toward the humanities or toward philosophy, and pre-engineering would give me a preparation for almost any career I wanted."

He completed three semesters of college within a year. In 1944, at 18, he became an Army Air Force cadet. With characteristic honesty Father Pierson says: "I went into the Army as a volunteer, but you know I wouldn't have volunteered if I hadn't known I was going to be drafted."

When he was discharged 15 months later, at war's end, he had served in Texas, South Dakota and Illinois and had managed to demonstrate a vigorous nonconformity. "I was almost court-martialed," the clergyman says with relish.

What actually occurred was slightly less dramatic; he refused promotion, an unorthodox state of affairs that infuriated his sergeant. "Another fellow and I decided we were going to stay privates," Pierson explains cheerfully. "But there were these automatic P.F.C. ratings that went through. And nobody ever heard of anybody turning one [fol. 437] down. But we did.

"We just didn't think the raise of four dollars and fifty cents a month was worth it. It was a nutty thing to do.

The outraged sergeant then threatened to have them made corporals, which they also turned down. "The sergeant said, 'You can't turn it down,'" Pierson recalls. "I don't know whether he forgot about it or just let it ride, but he was kind of mad. . . ."

So Pierson stubbornly left the Army as he had entered it, a private. Unwittingly, though, he carried within himself the seeds of later and more meaningful intransigence. In Texas he had been nudged into painful recognition of racial discrimination.

"I remember seeing the first movie theater with an entrance for colored people," he says. "And buses with the signs 'white' and 'colored.' It shocked me."

The shock cracked the mold of his thinking, opening it to the stimulus of campus discussion at the University of Wisconsin, where he continued his studies after the war. The transition was gradual, almost inperceptible.

"I was a typical college student," he says. "I belonged to a fraternity that didn't admit Negroes, Jews, Chinese—anyone."

He had always taken his conservatism for granted. "For the first time I realized there was an alternative," he says. "The one of accepting the possibility that what I'd always [fol. 438] 'known' was not necessarily true—that 'my way' wasn't always 'the right way.'"

Years after he had completed the process of forging an independent outlook, Bob Pierson read that an Illinois chapter of his fraternity had pledged a Jewish student, depledged him in compliance with orders from the national body and finally, defiantly, repledged him, prepared to accept the consequences. Father Pierson promptly wrote a letter to that insurgent chapter "congratulating its members on their stand."

From boyhood on he secretly had wanted to be an architect. "I think I could always remember buildings more than most people do. I had an urge to create, to build. . . ."

But the pressures of the war period had taken their toll. "My grades at Lawrence were not good enough to warrant getting into an out-of-state school," he says, "Wisconsin had no school of architecture. Illinois did, but it was taking only the cream of the crop. It was like pulling teeth—or knowing the governor of the state—to get into the University of Illinois. And I couldn't do it."

So he majored in "the next best thing, the closest thing I could find to architecture"—light building industries at the School of Commerce—and received a bachelor of science degree in the spring of 1949. He maintains now that his frustration was minimal.

"Finding your vocation sometimes consists of opening many doors," he says. "There are many possibilities and [fol. 439] interpretations. I don't know any better way to say it.

"You follow a course, and when it is no longer open to you, you take another course and follow that as long as it's open to you."

To many people this would represent nothing more than the recognition of opportunity. But for Father Pierson it has other implications. "Maybe that's the way God works," he says.

In his own case the right door did not open until a year after his graduation from the University of Wisconsin in 1949. During that year Bob Pierson had explored the building field, done a little traveling and a great deal of thinking. Early in 1950 he arrived home without a job.

"He sat in that chair," his mother recalls, "his legs stretched out. I thought he'd been looking at the want ads. I said, 'Aren't you looking at the ads?' He didn't answer. Finally he looked up and said, 'I think I'll be going back to school.'

"I wondered what in the world he was going back to school for. He hesitated a little bit. Then he said, 'I think I'll go to a seminary.' I said, 'You do?' He said, 'What do you think?' I said, 'It's all right.' Then Bob said, 'What do you think Dad will think?' "

That spring, on the advice of his minister, Bob Pierson registered at the Garrett Biblical Institute, a Methodist seminary in Evanston, Illinois.

What shaped his decision to go into the ministry? "God," says Father Pierson. How? Possibly through environ- [fol. 440] mental factors, he suggests. To the best of his recollection, his mother had never pushed him in the direction of his minister uncle, but he had somehow sensed that she would be pleased if he took that path.

(Recently, informed of this motivation, Mrs. Pierson exclaimed, "Forever more!" Her eyebrows arched ceilingward in astonishment. "How Bob could have thought that! Isn't that funny?")

Life at Garrett Biblical Institute was not without its problems, however. "There was a sort of playing down of theology when I was there," Bob Pierson says. "There was this liberal attitude of 'Don't worry whether the devil exists or not—we've got problems here and now that have to be dealt with.'

"I had assumed—rather naively, as it turned out—that the seminary was the place where I would acquire the fund of knowledge I lacked about the Christian religion and its basic doctrines. But I was told, 'Don't worry about that.'

"I didn't think this was right and I said so. I told it to some of the professors and I told it to all the students who would listen. They looked at me with that funny look—a kind of 'Well, you'll probably go to the Episcopalians before long.' And about a year later, that's what I did."

There was an Episcopal seminary across the street from Garret. He consulted those in charge there, but was urged to postpone his decision for a year.

[fol. 441] "They said such an abrupt transition would be, in all probability, more than I could bear," he says. "They recommended that I do some reading in philosophy and history. But the main idea was to give myself a year to get my thinking straight.

"My parents weren't terribly happy, I suspect. They didn't indicate they were unhappy. That's not in the Calvinist tradition. They are really old-line, Bible-belt Presbyterians, and I knew they would prefer that I go back to the Presbyterians if I made any change from the Methodist Church, to which we currently belonged. But the Presbyterian setup was a lot like the Methodist. . . ."

While sorting out his emotions Pierson drove a truck for a dry-cleaning establishment in Milwaukee. In the fall of 1951 he braced himself on the threshold of Nashotah House, an Episcopal seminary in Nashotah, Wisconsin, about 35 miles from Milwaukee. This time the door opened wide at his knock. He was to be ordained three years later.

At the close of his second year he received an unexpected bonus. He went abroad. Actually another door was opening, but he couldn't know that. A friend who was to have accompanied a group of boys and girls to England as assistant chaplain chose to go to graduate school instead. Pierson was the substitute.

"Off I went," he says. "It was tremendous. We sailed on the Cunard's Georgic, not exactly the flagship of the [fol. 442] fleet. It had spent some months on the bottom of the Suez Canal during World War II—and looked it."

But the trip was idyllic. Pierson, six feet two, with cherubic features, was not much older than his 22 charges, all of whom were volunteering to serve that summer as unpaid social workers in London's East End settlement houses. Every afternoon he called them together for a

20-minute conference, which was nearly the whole of his official duties.

"They were really very responsible kids," he says. "I didn't have to do much chaperoning. They stayed out of trouble."

One of the three girls was a fair-haired, reed-slim Wellesley sophomore. Her name was Ann Clark Rockefeller.

Back in Eagle, Bob Pierson's parents almost at once had intimations of romance.

"The first letter just mentioned that Ann was in the group," says Donald Pierson. "The second letter said a little more about her and the third letter a lot more. Finally he began to report everything she said and everything she thought and everything she did."

"It was obvious," says Mrs. Pierson, "that he was in love."

Pierson was assigned for the summer as an assistant at All Saints Church in London's East End. He organized his chores so that he could escort Ann on occasional sightseeing tours.

"Several of us took some trips together," he recalls. "We [fol. 443] went up to Edinburgh for the music festival, for instance. I got to know Ann better. We found a lot of our interests were the same."

They returned together on the Georgic. Marriage had crossed Bob Pierson's mind, but the implications of the Rockefeller prestige gave him pause. He is inclined to think Ann had a comparable hurdle to overcome before accepting the burdens that are part of a clergyman's life.

"Ann came into the Episcopal Church after we met," Pierson says. "I frankly don't know what she was before. I don't know if she knows. She was Protestant.

"The question of whom I marry, of what thoughts go into the preparation for marriage—they're all part of a whole. I argue that what I do, I do because of what I believe. I don't belong to the school that says, 'Don't worry about beliefs—it's action that counts.' Ann feels the same way. And our marriage had that kind of rational basis.

"We took all the facts into account. In other words, going far deeper than emotions but not leaving emotions out—if it seems right, why, then, it is right."

Before the engagement was announced, Ann's mother was entertained by the Piersons in their white-pillared Victorian home, which sits with curious formality amid the flat, isolated fields.

"I couldn't let my daughter visit people I didn't know," said Mrs. Rockefeller. "Don't you think I'm right?"

[fol. 444] "We would have done the same thing with our daughter," Mrs. Pierson assured her.

"The first time Ann visited us," says Mrs. Pierson warmly, "she made her own bed before she came downstairs. We couldn't keep her out of the kitchen. She wanted to help. And she never primped.

"Sometimes she'd kick off her shoes and curl up in an old tapestry chair. That one over there. It was all faded and worn. It's been recovered since. I used to worry about what Ann would think of the upholstery, but she never seemed to mind."

Father Pierson, having finished his seminary training, found his first job in New York City. "It was a summer project at St. Margaret's Parish in the Bronx," he says. "I kind of herded the little kids around, trying to keep them off the street as much as possible."

He had been trying for two years to be assigned as a missionary, and after the steaming summer in New York spent several weeks at a Boston monastery, hopefully preparing for a post in Japan. But when the next door opened it was not in the Far East but back in the Bronx.

"Out of the clear blue sky," he says, I was offered a position as assistant at St. Paul's Episcopal Church, just two parishes north of St. Margaret's."

Father Pierson, his missionary ambitions submerged, joined the staff of St. Paul's in the fall of 1954. In March [fol. 445] he was advanced to priest-in-charge. His first congregation was predominantly Negro, with a high percentage of West Indians. In his three years there the young minister encountered all the complexities of a changing neighborhood.

"I think my attitude on integration matured at St. Paul's in several ways," he says. "I learned at first hand what books had told me. I'd never had a great deal of contact with people other than those in my own tight little circle. Yet I knew intellectually that people are basically the same. At St. Paul's I learned this to be a fact through experience."

He acquired, he says with a grin, a "way-out" reputation in dealing with the various elements within the parish.

"We had a Puerto Rican influx in the neighborhood. In order to remain consistent with my policy that people are the same, I welcomed the Puerto Ricans on an equal basis. And I ran into opposition from some of the Negroes.

"So we had a big battle at one parish meeting. The parishioners decided they didn't want any Puerto Rican to do social work among them. And I was announcing I'd hired a Spanish worker. I was kind of mean that day. I lashed out at them. I told them I was surprised at them for having such an attitude. Well, we got the Spanish worker."

He chuckles suddenly. "But they were awful mad at me. For most of the three years I was in that parish, people [fol. 446] were mad at me most of the time, I think."

Like most of Father Pierson's depreciatory self-appraisals, this one is grossly exaggerated. He has a habit of ignoring his victories.

On June 25, 1955, two years after the round trip on the Georgic, Ann Rockefeller, 20, became Mrs. Robert Laughlin Pierson. The ceremony was performed by the Right Reverend Charles Francis Boynton. Suffragan Bishop of the Diocese of New York, at St. Paul's.

"All the parishioners were invited," Father Pierson explains. "We wanted it that way. A marriage is basically a public ceremony.

"The senior warden took great pains to see that the church was in tiptop shape. The place was so spruced up you wouldn't recognize it. I think they all enjoyed the wedding. The church was full."

The bride, in a princess gown of taffeta, wearing her maternal grandmother's lace veil, was given in marriage by her father, then special assistant to President Eisenhower. Her sister Mary was maid of honor; Pierson's brother Don was best man. A full complement of Rockefellers and Piersons attended, beaming appropriately.

As its single concession to the press the young couple, well matched in youth and grace and height, posed for photographs outside the church.

A reception—"a little less sacramentally oriented," observes Father Pierson good-naturedly—was held afterward [fol. 447] at the Rockefeller Pocantico Hills estate near Tarrytown, New York, where Ann Rockefeller had made her debut in 1952.

There too the parishioners from St. Paul's were welcome. Don Pierson, Jr., and Ann's brother Michael, who disappeared a few months ago on an anthropological expedition in New Guinea, provided a shuttle service for guests in need of transportation.

Ann Pierson moved into the St. Paul's rectory, where her husband had been living since autumn. "It was a kind of old, beat-up place," says Father Pierson. "Three floors. Ann liked it very much. We had a kind of very interesting setup. We brought in strays from all over.

"We had a fellow come down from Boston who stayed with us awhile and worked as a sexton. Then we had another man come up from the Bahamas who was thinking about studying for the priesthood.

"For a while we had an older woman who came to us from a mental hospital. She'd been ready to be released, but there wasn't anybody that would take her, so we brought her in.

"There were usually six or seven adults in the house, plus a great gal named Sue, who did most of the cooking. Two of our children, Clare and Joseph, were born while we lived at the rectory. And my wife was going to Barnard, finishing her senior year so she could go back to Wellesley and get her degree."

The former Ann Rockefeller had slipped effortlessly into [fol. 448] the role of Mrs. Pierson. Straightforward, unpretentious, she had none of the affectations that some members of the congregation had both expected and feared.

As 1957 inched its way out, Pierson accepted a bid to join in creating the Christ the King Foundation in Evanston, Illinois. "We planned," he says, "to prepare our church for re-entry into the world of education by starting a community of scholars, all members of the Episcopal Church, coming together, representing a number of different disciplines, doing some basic thinking and coordinating to evolve a philosophy of education."

Pierson left St. Paul's on December 31st. Although amiably disposed to emphasize the friction between himself and members of his congregation, he nevertheless concedes that "I've kept a lot of good friends from that parish." Typically, he doesn't mention that he was presented with a plaque before his departure by the Adult Council of Claremont Center in the Bronx in recognition of his community activities while he was priest at St. Paul's.

Pierson remained in Evanston as vice-chairman of the Christ the King Foundation until its demise last May. His disappointment is still vivid at the Episcopal Church's failure to provide funds for an institute on land made available to the foundation by the University of Chicago.

"One of my last acts was to rent an apartment we own out [fol. 449] there, the apartment we lived in, to a Negro family. I think it's the first time an apartment house in a white area of Evanston has been integrated. It's taken some working out. We've had protests and meetings. But no rocks were thrown and there's been no exodus of the whites."

It was just as the foundation was expiring that he got a letter from Atlanta, Georgia, headquarters of the Episcopal Society for Cultural and Racial Unity, an organization of fairly recent vintage dedicated to "encouraging men to respond positively to God's call for unity in the Church." Pierson had been recruited into ESCRU while he himself was trying to recruit a friend for work in the Christ the King Foundation.

The letter proposed a pilgrimage through the South for Episcopal priests "in an attempt to build up communication with their Southern brethren and to examine the facilities and see what is being done to alleviate the problems of segregation that are the concern of the entire Church."

For Pierson this had the significance of another open door. "It seemed to me that I had no choice but to go," he says. "I didn't have a job, you see. I sent in my application."

Only then did he inform his wife of what he had done. "I didn't want to make too much of an issue of it," he says whimsically, "because I knew it would come up again."

[fol. 450] Ann Pierson, possibly with the same thought in mind, at the time remarked only, "That's fine," and then proceeded to blot out the entire episode.

And so at the end of August, while they were holidaying in Maine, Father Pierson had to joggle his wife's memory after ESCRU had sanctioned his application.

Breaking the news, his voice elaborately casual, he had said, "Well, I've been accepted."

"Accepted for what?" his wife asked.

"Accepted for a Freedom Ride." He supplied the details as matter-of-factly as he could, aware that her enthusiasm for his civil-rights crusade was considerably tempered by the physical risks involved.

"You don't sound very excited about it," was his wife's comment.

"Well," said Bob Pierson, "I'm not."

"Don't you want to go?"

"No," said Pierson quietly.

"But of course it wasn't a question of whether I wanted to go or not," he explains today. "It was a thing that had to be done. I was between jobs and I really didn't have any excuse for not going." The laughter lines around his eyes begin to crinkle. "There was no twist of fact that I could make that would justify my saying I had to stay home [fol. 451] and provide for my wife and children. My wife wasn't going to starve. My in-laws could certainly afford to keep Ann and the children while I went on a prayer pilgrimage—just as many other in-laws would be keeping their families under the circumstances.

"I was not eager to go," he admits frankly, "because I have an innate fear of the unknown. I'm basically not an adventurer. But then, I don't think there was an adventurer on that pilgrimage. There wasn't a single rabble-rouser. There were no wild-eyed idealists. We were all just sort of fairly down-to-earth, business-like people."

While Ann Pierson never actively opposed her husband's joining the pilgrimage, she did question his decision several times. "She never really asked me to prayerfully reconsider," Bob Pierson says. "It was something she knew I felt strongly enough that I should do. But she wanted to sort of take a pulse now and then to see if my mind had changed."

But his mind hadn't changed.

A few days after his conversation with his wife, Father Pierson spent the weekend with his parents and his brother in Eagle. "They wanted to know what I was going to do next," the clergyman recalls. "I said I was going down to New Orleans."

"They said, 'What are you going to do down there?' I said, 'I'm going on a Freedom Ride.' They thought I was joking. And I knew that they thought I was joking. But I said no more about it." On September 11th, 28 Episcopal [fol. 452] priests converged on New Orleans. Six were Negro; 22 were white. In the evening the clergymen were briefed on the theory behind nonviolence and its practical application. The speaker was Dr. Martin Luther King's associate, the Reverend Wyatt Walker.

"We were somewhat apprehensive," Pierson admits. "Walker told us what possibilities to expect. He had a couple of husky guys with him to give us a demonstration of what might happen. What you're supposed to do when somebody comes at you with a chair. You're not supposed to raise your hand in self-defense because that constitutes possible violence. It might look as if you were attacking him. You just duck. They told us things were pretty quiet in Jackson and that there shouldn't be any trouble. But if there was, whatever you do, don't try to hit back. So that was that."

That was Monday. On Tuesday morning the pilgrims piled into a chartered bus en route to Tougaloo, Mississippi, where they would be housed that night in a Negro college, Tougaloo Southern Christian. At noon they halted in McComb, Mississippi, to rest. They located an Episcopal church and filed in, Negro and white, for midday prayer.

"It was a narrow escape," says Father Pierson. "As we filed in a police car came by, stopped and looked us over. Then the cops went over to our bus driver and asked him what was going on.

"I can imagine what the people in Jerusalem felt like [fol. 453] when they were under siege. They were inside the walls; they couldn't get out. That's the way we felt.

"We asked the bus driver later what had happened. He said, 'Well, they came over and asked what you were doing. I told 'em I guessed you were going to say prayers.' The cops hung around awhile. But they let us alone."

The bus lumbered on to Tougaloo without further incident. "The college had been 'integrated' by the admission of two white students, former Freedom Riders who had been arrested in Jackson and then returned to enter Tougaloo," says Pierson. "We found the faculty most impressive."

That evening the 28 pilgrims divided into three groups, the first heading for Sewanee via Jackson, the second leaving directly for Sewanee and the third going on to Detroit.

"We intended to cut a swath through the nation from the Gulf Coast to the Great Lakes," Pierson explains. "Our pilgrimage was to begin in protest and end in protest. The original itinerary covered New Orleans, Jackson, Sewanee, Dearborn and Detroit. And there was ample room for protest everywhere."

Pierson was with the 15-man Jackson party, which was to make a side trip to the segregated Trailways bus terminal in that city, where they hoped to have an integrated lunch before boarding their bus. Early Wednesday morning the clergymen set up a table as an altar in the plain, [fol. 454] rather homelike chapel at Tougaloo College and celebrated Mass there.

After breakfast Father Pierson telephoned Seal Harbor and spoke to his wife. He was gratified to find her "quite collected." It is not unlikely that she was somewhat calmer than he at that moment, since she had not been listening, as he had, to the Jackson radio, which was announcing that the clergymen were expected to arrive in town soon.

Shortly after 11 A.M. their luggage was loaded into taxis.

"We integrated the cabs," says Father Pierson, laughing. "There were three taxis with five men in each, one Negro to a taxi. The jitters descended upon us, all at once. It was only a twenty-minute ride to the bus terminal in Jackson, but we were so tense that it seemed more like two hours.

"Nobody talked very much. We didn't know what was going to happen. We arrived at the terminal, got out of the cabs and walked in. We had been afraid that everybody in Jackson would be there. But everybody wasn't there. In fact, there were few people there. And they never came near us."

It was 11:30 A.M.

The ministers strode toward the lunchroom. Six of them had entered it when a patrolman appeared. He ordered them to come back out of the lunchroom.

[fol. 455] "We all held up our tickets," says Pierson. "We said: 'We want to eat lunch. We're interstate travelers. We're on our way to Chattanooga. We're not disturbing the peace. We're law-abiding citizens.'

"The patrolman said: 'You understand my orders? Move on.' And we said, 'We will move on as soon as we have a sandwich and a cup of coffee.' And the cop said, 'Do you understand that I'm asking you for the third time to move on?' We said, 'Yes, we understand.' And the patrolman said, 'You're under arrest. Wait here.' "

It was 11:35 A.M.

Only five minutes had passed since the 15 ministers had climbed out of their cabs. Once more they waited. And, waiting, they prayed.

"Then," Pierson resumes, his voice creamy with sarcasm, "kindly, genial ole Cap'n Ray of the Jackson city police—Captain J. L. Ray, the 'famous' man who had arrested three hundred and seven Freedom Riders by then—came in. Hands on hips, he said, 'Now, I'm tellin' you, men, there won't be any trouble here. I'll get you on that bus. There won't be any trouble if you just follow me.'

"We said no, we were going to have lunch. We said again, 'We're interstate travelers.' And then we all held up our tickets. It hadn't been rehearsed, but we knew that we had to establish without any question that we were traveling from one state to another and therefore legally had the [fol. 456] right to use the bus facilities. There must have been fifteen tickets held up right in front of Ray's face.

"Later, in the courtroom, Ray said he never saw any tickets. And he said the 'crowd' was in an ugly mood. Why, there was no crowd. There were, at the most, thirty-five people in the terminal, and they were all standing at the far end.

"Captain Ray said, 'Now, I'm tellin' you, we don't want any trouble.' And we told him we didn't intend to give him any trouble. And he said, 'You have to move on.' He said it three times. And then he said, 'You're under arrest.' Then the paddy wagon came, we were packed into it and hauled off to jail."

The Jackson jailers had grown accustomed to the ways of civil-rights partisans. The new inmates were courteously received as the first all-clergy group.

"The jail was sort of like a Y.M.C.A. with bars," says Father Pierson. "It was nicely ventilated and clean, with almost no cockroaches. Just waterbug-type things."

The 12 white clergymen were placed in one cell, the three Negro clergymen in another just down the corridor. Each of the prisoners was permitted one telephone call. It was then Pierson telephoned his whereabouts to his wife. "We weren't even allowed to get on the bus," he told her wistfully. While he talked the guards stood around and listened. [fol. 457] Later Ray said reproachfully to the pilgrims, "Now, you men knew you were going to be jailed, didn't you?"

"Well, we look at it this way, Captain Ray," Pierson retorted. "Someday the bus station here is going to be integrated. And you know that as well as we do. We just thought that maybe the day we were there would be the day of integration."

Time passed slowly for the pilgrims. They were permitted to have their luggage brought into their cells. Since one of the priests had his Mass kit with him, they conducted communion services daily. They said morning, noon and evening prayers. They had their meals and had naps. And they had free time—too much.

"We offered to paint the cell for them," Pierson says. "It had been marked up by prisoners for years back. They said, 'No, we don't want you to do that.' We asked for some brooms and mops. The jailer said, 'No-oo-o, we don't want you to do that either,' We asked why. The jailer said, 'We got niggers to do that.'"

Pierson's mouth twists with distaste.

On the whole, Jackson treated its captive visitors politely, even deferentially. Negro trusties—violating the jail rules to do it, but apparently ignored by officials—ran messages between the white and the Negro ministers, bought them candy bars, plied them with instant coffee. The two cells communicated by shouting back and forth when trusties were unavailable.

[fol. 458] On Friday, September 15th, two days after the arrest, there was a break in the routine. The pilgrims were marched downstairs for a hearing before Judge James L. Spencer. Carl Rachlin, chief counsel for CORE (the Congress of Racial Equality), and a local attorney, had consented to represent the defense.

When the Reverend John Crocker, Jr., of Providence, Rhode Island, took the stand to outline the ministers' objective in coming to Jackson, the judge commented, "It seems to me you're getting into more of a sermon than an answer."

Ray testified for the prosecution. "Genial ole Cap'n Ray made his statements," says Pierson. "He said there was a crowd in the terminal and the crowd was dangerous. We were found guilty."

Judge Spencer remarked that it was "especially grievous" for him to pass sentence because the defendants were ministers of his church. But pass sentence he did: four months and $200.

After two hours and 20 minutes the pilgrims were led back to their cells. They occupied themselves with writing letters, singing hymns, composing folk songs, formulating statements and resting rather gingerly on their steel-plate bunks.

Meanwhile, at Seal Harbor, telephone wires and TV aerials had been blown down by a storm, so that Ann Pierson remained ignorant of the sentence until she was able to communicate with Father Pierson's parents a day or two later.

[fol. 459] Mrs. Pierson says, "Ann telephoned us to ask what we knew about Bob. We told her we'd just heard he would be in jail for four months. She said, 'Oh, my goodness! Four months. . . .' "

By the sixth day, Tuesday, September 19th, the Episcopal Church had raised some $6,800 for bail, not quite enough to post a $500 bond for each of the 15 clergymen. But two of them, both prison chaplains from Chicago, volunteered to remain behind bars as long as necessary. "They had a long, long stay—until the 30th," says Pierson. "But it was a point of interest with them to study prison conditions from the inside."

The other 13 pilgrims trooped outdoors. "We were delighted," says Father Pierson simply. Standing on the jailhouse steps, he read a statement to the assembled reporters for all 15 ministers. Many people, Father Pierson said, had found it difficult to understand the purpose of the group's action, and he wanted to explain that the prayer pilgrimage had been undertaken "to testify to the nature of the Christian Church as a fellowship, grounded in one Lord, within which there is no place for separation by race, class or culture."

As priests, he said, the group could not conscientiously avoid situations in which "segregationist laws operate contrary to the law of the land." He said the group had planned to protest discrimination in the North as well as in the South, and that the State of Mississippi, by preventing completion of the pilgrimage, had "focused upon [fol. 460] its own failures the attention which otherwise might have been diverted to failures elsewhere." And he closed with an appeal to the "consciences of Christians everywhere" to "banish all traces of racial segregation and discrimination from the Church and from all parts of the land."

Then the clergymen enjoyed the first fruits of release—telephone calls to their families. In Atlanta they held a press conference, spent the night at a hotel and finally, only one day late, flew to Detroit for the 60th General Convention of the Episcopal Church. There Ann Pierson joined her husband.

Back in New York now, Father Pierson has a new job. He is assistant director of the American Church Union, at 347 Madison Avenue, a voluntary fellowship of clergy and laity dedicated to the promulgation of a better understanding of the "ancient Catholic heritage" of the Episcopal Church.

Pierson, the initial shakedown period over, is just beginning to settle down. He has moved his family into a newly rented home in Westchester.

The trial in Jackson early in May means a major interruption in his work and in his life. In Wisconsin his mother muses, "Do you think he is sorry he went on the prayer pilgrimage?"

Says the Reverend Robert Laughlin Pierson: "Sorry? No! I certainly would do it again." . . . The End

***

[fol. 461] Mr. Watkins: No further questions.

Mr. Rachlin: No further questions.

The Court: You may stand aside, Reverend.

(Witness excused)

James P. Breeden, called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. Do you mind telling us what your home is?

A. My home is 11 Akron Street, Roxbury, Massachusetts.

Q. Briefly, will you tell us what your education is?

A. I was educated in public schools in Minneapolis, Minnesota. I went to Dartmouth College, where I received my BA Degree, and to Union Theological Seminary, Bachelor of Divinity.

Q. Will you tell us when you were ordained as a priest of the Episcopal Church?

A. I was ordained a priest in December, 1960.

Q. Do you serve any parish at the present time?

A. Yes, at St. James Episcopal Church in Roxbury.

Q. By the way, are there both whites and Negroes at this parish church?

[fol. 462] A. There are, yes.

Q. Who is the bishop of the diocese of Massachusetts?

A. The bishop is Bishop Anson Phelps Stokes, Jr.

Q. And is there a co-adjutor bishop?

A. There are two suffragan bishops.

Q. Two suffragan bishops?

A. That's right.

Q. And is one of those bishops a Negro?

A. One of them is a Negro, yes.

Q. I take it you are? Would you state that for the record?

A. That is right.

Q. Now, Father Breeden, was there an occasion when you were in Jackson, Mississippi on or about September 13, 1961?

A. There was.

Q. Can you tell us whether you had occasion to be in the vicinity of the Continental Trailways bus station in Jackson a few blocks from this courtroom on that day?

A. I did have such occasion.

Q. About what time was it when you arrived?

A. About 11:30 A.M.

Q. Were you alone or in the company of others?

A. I was in a company of 14 other Episcopal priests.

Q. Was Mr. Morris, one of the plaintiffs here, one of them?

[fol. 463] A. He was.

Q. Was Father Breeden one of them?

A. Father Pierson?

Q. Father Pierson. Sorry.

A. He was.

Q. Was Father Jones one of them?

A. He was.

Q. Do you recall approximately where you got out of your vehicles to enter the station?

A. Yes. It was about 25 yards from the entrance of the station in the driveway to the left as you face the station.

Q. Did all of you walk directly to the entrance of the station?

A. Yes, we did.

Q. Approximately how long did it take you?

A. I would guess between half a minute and a minute.

Q. Did you happen to notice whether there were any substantial numbers of people who followed you into the station?

A. To my observation, no one followed us into the station.

Q. Now, do you recall whether you were amongst the first of the 15 or in the middle of the group of 15 or toward the end of the group?

A. I was one of the first to enter the station.

Q. You were one of the first. In your own words, tell us [fol. 464] exactly what happened and where you went as you entered through the door of the Continental Trailways bus station.

A. I with several others who were immediately around me entered the station. As I recall, the first thing I saw were two police officers standing a few feet from the entrance. We—

Q. Do you see those police officers in court today?

A. Yes, I do.

Q. I wonder if you could indicate them.

A. They were the two officers at Chief Ray's right at the moment.

Q. All right. Indicating Officer Griffith and Officer Nichols?

A. That's right, yes.

Q. Two of the defendants in this case?

A. That's correct.

Q. Please go on.

A. There were several other people in the station. I would guess about 15 or 20, no unusual number. We turned to the left and walked immediately to the restaurant area. I and several others entered the restaurant, and I believe I was about to pull out a chair to sit down when I heard a voice saying, "Youall come out of there."

Q. Did you do that?

A. Yes.

[fol. 465] Q. Where did you go?

A. I went just to the entrance of the restaurant, and there were two officers there, the two previously indicated. One of them said, "Youall will have to move on." Several in the group, myself included, stated that we were interstate travelers, that we wanted to eat before catching our bus. The officer repeated that we would have to move on. We again repeated our protest. The officer then said, "Do you understand my order?" and we said, "Yes," and then he said "You're under arrest."

Q. Now, two questions: One, did you have tickets for any destination, and, what was the destination?

A. Yes, we all had tickets for Chattanooga, Tennessee.

Q. And, secondly, at any time did either of the two officers—either Officer Griffith or Officer Nichols—indicate to you or tell you or any of the others what you were doing that was wrong?

A. As far as I recall, no.

Q. Please continue. What happened after that?

A. We gathered in a group and said together the Lord's Prayer and another prayer. One of the officers went to the telephone. I can recall that I turned aside to the small counter there in order to get a package of matches and [fol. 466] asked the girl for some matches, and she turned and walked away from me—

Q. Somebody behind the counter?

A. Behind the counter, yes. So I asked one of the other priests if he would buy the matches for me. And his skin color was apparently more acceptable, and he was able to purchase them.

Q. Now, at this time were you able to observe the demeanor of the other persons sitting or standing in the bus station?

A. Yes.

Q. How were the other persons in the bus station behaving at this time?

A. I noticed no unusual behavior other than, of course, the fact that attention was being centered upon us.

Q. Did anybody in the group in the bus station indicate by word of mouth or by gesture any hostility toward the group?

A. Not that I observed, no.

Q. Was there any unusual hubbub from the people in the station?

A. No, being from the North I would say there was considerably greater silence than there would have been on most occasions had 15 priests been in such a situation.

Q. Are northern bus stations usually noisier than southern bus stations?

[fol. 467] A. I've had very little experience at southern bus stations, but they're usually noisier than the Jackson bus station was at that time.

Q. Was the Jackson bus station quite quiet? Is that right?

A. Yes.

Q. Now, after reciting the Lord's Prayer, do you recall what took place?

A. It was only a few seconds afterwards that Captain Ray appeared in the station.

Q. Did you see him enter the station?

A. Not at the point of entry. I saw him as he approached our group.

Q. Well, did he walk directly toward you or did he stop?

A. As I recall, he walked directly to us.

Q. Did you observe whether he spoke to any of the people in the station?

A. My recollection is that he spoke to no one except our group.

Q. And I take it he didn't speak to either Officer Griffith or Officer Nichols? Is that correct?

A. I don't recall his doing so.

Q. Did he ask anybody in the station other than yourselves to leave the station?

A. No.

[fol. 468] Q. By the way, did either of the two officers, to your knowledge, ask anybody in the station to leave the station?

A. They did not.

Q. Please continue. What happened then when Chief Ray, then Captain Ray, came over to you?

A. He said to us that we would *haveto* move along. We said that we can't move along; we were interstate travelers; we had our tickets; our bus was soon to leave; and we wanted to have lunch before we left. We assured him that as soon as we did have lunch we would be happy to move on our journey. He said again that we would have to move along. Again, I believe, he ascertained that we understood his order. He said somewhere along the line that he would see that we got on our bus. And then, finally, he placed us under arrest.

Q. Did he at any time ever say to you what you were doing that was wrong or how you were violating any law of the State of Mississippi or ordinance of the City of Jackson?

A. Not to my recollection, no.

Q. What happened after that?

A. I'm not certain whether he made a phone call or not, but in any case, finally he asked us to accompany him to the lot at the rear of the station. We went there and [fol. 469] waited until the police wagon came, and then we got in the wagon and were taken to the city jail.

Q. Did you observe any unusual crowd in the back of the station before the patrol wagon got there?

A. No, there were a few people who were obviously curious about what was going on, but they stayed, I suppose, a good 25 or 30 yards away and made no—

Q. Did you observe any hostility among any of the people in the back of the bus station while you were waiting for the paddy wagon?

A. No. I recall one woman who was with a companion shaking her head and making some remark. I assumed that she was upset because we were being arrested—

Mr. Watkins: We object to what he assumes.

The Court: Yes, sustain the objection to what he assumes.

Q. Eventually the paddy wagon came along?

A. Yes.

Q. How long did you wait before it came along?

A. Maybe four or five minutes.

Q. Was this the first time in your career that you had ever been inside a paddy wagon?

A. Yes.

[fol. 470] Q. Did you go into this voluntarily, or were you under orders to go into it?

A. I was under orders.

Q. Were you taken with the others—where?

A. Taken to the city jail.

Q. Do you mind briefly describing what took place there?

A. We were together, the group of 15 of us, were together in a room. One by one our personal belongings were checked. We were fingerprinted, photographed, interrogated, and then finally sent, I believe, upstairs to a cell.

Q. By the way, were you sent into the same cell as either Father Pierson or Mr. Morris?

A. No, I was not.

Q. You were sent into a different cell?

A. Yes. Apparently the three of us who were identifiable as Negroes were to remain in one cell, while others were in another cell.

Q. Do you recall how many days later you had your trial before Judge Spencer?

A. September 13 was a Wednesday, I believe.—

The Court: —At this point, if you will keep in mind where you are, we will take a ten minute recess.

(Whereupon court was recessed for ten minutes) [fol. 471] **After Recess**

Mr. Rachlin: I wonder if I might ask the court reporter what the last question and answer were?

(Last question and answer were read by the reporter)

A. Our trial was held on Friday of that week.

D. Do you recall who testified for the plaintiff at that time?

A. The then Captain Ray testified.

Q. Did anybody testify on behalf of the defendants in the case?

A. Yes, the Reverend John Crocker testified for us.

Q. Were you there when Judge Spencer passed sentence?

A. Yes, I was.

Q. Had you pleaded guilty or not guilty?

A. We pleaded not guilty.

Q. Do you recall what Judge Spencer did? How did he find?

A. He found us guilty of breach of the peace.

Q. Was there a sentence?

A. Yes, there was.

Q. Did you hear him pass it?

A. Yes, I heard him pass sentence.

Q. What did he say?

A. He sentenced us to four months in jail and $200.00 fine each.

Q. Then what happened immediately after that?

A. We were returned to our cells.

[fol. 472] Q. How long did you remain in your sell thereafter?

A. We remained until Monday of the following week, I believe.

Q. I refresh your recollection by saying that Mr. Morris said it was Tuesday. Would that refresh your recollection on that?

A. Yes, I'm sorry. It was Tuesday.

Q. After you were released from jail, where did you go?

A. We went on to Atlanta.

Q. Was that your terminal point?

A. No. Then from Atlanta to Detroit, Michigan to the general convention of the church.

Q. Did you appeal your conviction passed upon you by Judge Spencer?

A. Yes, we did.

OFFER IN EVIDENCE

Mr. Rachlin: At this point I would like to offer similar records to those previously entered.

The Court: All right.

Mr. Watkins: No objection.

The Court: Let it be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Plaintiff's Exhibit No. 5, which Exhibit follows here below:)

[fol. 473]

EXHIBIT PLAINTIFF #5

WITNESS BREEDEN

MAY 15 1963

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, H. T. Ashford, Jr., Clerk of the Circuit and County Courts and custodian of the said records in and for the said State and County, hereby certify that the foregoing 8 pages contain a true and correct copy of all the pleas and proceedings had and done in the case of State of Mississippi vs. James Pleasant Breeden in the County Court of the First Judicial District of said County in said State, and being case No. 12929.

Given under my hand and the seal of the County Court of said County and State this the 8 day of May, 1963.

H. T. ASHFORD, JR.
Circuit and County Courts,
Hinds County, Mississippi
(SEAL)

/s/ ROBERT E. LILLEY D.C.

No. 12929

(Filed Oct. 2, 1961)

October 2, 1961

County Court Clerk
Hinds County Courthouse
Jackson, Mississippi

Dear Sir:

Section 1205 of the Mississippi Code of 1942 provides that "The Justice of the Peace, or Mayor, or Police Court [fol. 474] from whose judgment convicting of a criminal offense an appeal shall be taken, shall at once transmit to the Clerk of the Circuit Court the bond taken by him and a certified copy of his record in the case, with all the original papers in the case, as in appeals in civil cases."

In accordance therewith, I am enclosing herewith a certified copy of my record in the case of State of Mississippi versus James Pleasant Breeden, with all the original papers in the case to be dealt with according to law.

With very best regards, I remain,

Very sincerely yours,

/s/ JAMES L. SPENCER
Police Justice and Ex Officio Justice of the Peace, City of Jackson, Hinds County, Mississippi

JLS:ssw

IN THE POLICE COURT OF THE CITY OF JACKSON, MISSISSIPPI

(Filed Oct. 2, 1961)

Docket No. 19

Page No. 404

STATE OF MISSISSIPPI

vs.

JAMES PLEASANT BREEDEN

CERTIFICATE

I, James L. Spencer, Police Justice and Ex Officio Justice [fol. 475] of the Peace, in and for the municipality of Jackson, Hinds County, Mississippi, do hereby certify that the attached and within:

1. Affidavit
2. Order for Cash Appeal Bond
3. Copy of Judgment
4. Notice from Sheriff
5. ....
6. ....

is a certified copy of my record in the case, with all the original papers in the case.

WITNESS MY SIGNATURE, this the 2nd day of October, 1961.

/s/ JAMES L. SPENCER
Police Justice and Ex Officio Justice
of the Peace, City of Jackson, Hinds
County, Mississippi

Docket No. 19

Page No. 404

STATE OF MISSISSIPPI

VS.

JAMES PLEASANT BREEDEN

JUDGMENT

(Filed Oct. 2, 1961)

This cause this day coming on for trial and the defendant [fol. 476] being arraigned in court on a charge of violation of Section 2087.5 of the Mississippi Code of 1942, and having pleaded not guilty and the court having heard testimony and being of the opinion that the defendant is guilty, it is therefore considered by the court and so ordered and adjudged that the defendant serve a jail term of 4 months and pay a fine of $200.00 and be committed to jail until paid.

ORDERED AND ADJUDGED, this the 15th day of September, 1961.

/s/ JAMES L. SPENCER
Police Justice and Ex Officio Justice of the Peace, Hinds County, Mississippi

Disposition of Defendant: Mittimus to Sheriff

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON,
FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON
vs.
JAMES PLEASANT BREEDEN

ORDER FOR CASH APPEAL BOND

(Filed Oct. 2, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, James Pleasant Breeden by and through his attorney, for authority to post a Cash Appeal [fol. 477] Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve a surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, James Pleasant Breeden, be and he is hereby authorized to post a Cash Appeal Bond of Fve Hundred ($500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

ORDERED AND ADJUDGED on this 18th day of September, 1961.

/s/ JAMES L. SPENCER
Municipal Judge & Ex-Officio
Justice of the Peace

Approved and agreed to:

/s/ (Signature illegible)
City Prosecutor

/s/ JACK H. YOUNG
Of Counsel for Defendant

[fol. 478] Cash bond is accepted because James Pleasant Breeden is a non-resident of the State of Mississippi and knows no person within the State of Mississippi who has property and is willing to make bond.

APPEAL BOND

(Filed Oct. 6, 1961)

12,929

STATE OF MISSISSIPPI)
)
COUNTY OF HINDS)

KNOW ALL MEN, That we James Pleasant Breeden Principal, and .... and .... sureties are held unto the State of Mississippi in the penal sum of ($500.00) Five Hundred & No/100 Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our names this 18 day of September, A.D., 1961.

The condition of the above obligation is that the above named James Pleasant Breeden on the 15th day of September A. D., 1961, before the Municipal Court of the City of Jackson in and for the said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum of ($200.00) Two hundred dollar and four months in jail dollars and all costs. And the said James Pleasant Breeden [fol. 479] hath prayed an appeal of the said judgment to the next term of the County Court in and for said County and State.

NOW, THEREFORE, If the said James Pleasant Breeden shall appear in person at the next term of the said County Court, and there remain from day to day and from term to term until discharged by law from the said charge, there then this obligation shall be void, otherwise it shall be in full force and effect and binding on all parties, joint and several, therein named.

Given under our hands, this 18 day of September 1961.

/s/ James P. Breeden Principal
11 Akron Street Surety
Roxbury 19, Massachusetts Surety

The foregoing Bond was filed and approved this 19 day of Sept. 1961.

J. R. Gilfoy,
Sheriff & Tax Collector
Sheriff of Hinds County.

By /s/ Fred Pickett
Deputy Sheriff.

[fol. 480]

(Filed Oct. 2, 1961)

Honorable James L. Spencer
Municipal Judge
Jackson, Mississippi

Dear Sir:

Pursuant to Section 1204, Mississippi Code of 1942, as annotated I, the undersigned, Sheriff of Hinds County, Mississippi hereby advise you that I have taken a cash appeal bond from the following named individual, after having duly approved the same; that I have further turned over the said bond to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi.

I hereby notify you as Municipal Judge of the City of Jackson, Mississippi, that an appeal has been taken with regard to said individual and I direct you to send up all papers regarding said individual to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi, as if the appeal bond had been filed with you, from whose judgment the appeal was taken.

Name	*Date of Bond*
James Pleasant Breeden	Sept. 19, 1961

Thanking you for your compliance with this request, I remain,

Sincerely yours,

/s/ J. R. Gilfoy
J. R. Gilfoy, Sheriff
Hinds County,
Mississippi

/s/ by Fred Pickett D.S.

[fol. 481]

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 12,929

STATE OF MISSISSIPPI

vs.

JAMES P. BREEDEN

ORDER

This cause coming on to be heard in the County Court of the First Judicial District of Hinds County, Mississippi, on the original affidavit of the City of Jackson, Mississippi, said causing having been brought to this Court upon an appeal, the State of Mississippi, being present by its special prosecutor, J. A. Travis, Jr., and the defendant, James P. Breeden, being present in person and represented by his attorney, entered a plea of not guilty.

The regular jury for the week, composed of Roy C. Tillman, and eleven other men, having been duly empaneled and sworn to try this cause, heard the testimony and evidence offered by the State. The State then rested and the defendant made a motion for a directed verdict. The Court having considered said motion, after arguments of the cause, is of the opinion that said motion should be and the same is hereby sustained, It is, therefore,

Ordered and adjudged that the said motion for directed verdict should be and is hereby sustained, and that the defendant is now hereby finally and forever discharged. It [fol. 482] is further ordered and adjudged that the cash bond of $500.00, heretofore deposited with the Sheriff of this County, be refunded to the defendant.

Ordered and adjudged on this 9th day of April, 1962.

/s/ Russell D. Moore
County Judge

Q. In pursuance of your appeal, how many trips back to Jackson did you make?

A. Two.

Q. Was this from Boston?

A. One was from Minneapolis, Minnesota; the second was from Boston.

Q. Do you know offhand what the round trip expense from Boston to Jackson is?

A. Approximately $200.00.

Q. Would you know what the expense was from Minneapolis?

A. Approximately $175.00.

Q. Did you suffer any loss of earnings as a result of your being confined to the county jail?

A. No.

Q. Did you suffer any loss of income as a result of that?
[fol. 483] A. No.

Q. Now, I will ask you the question I have asked all the others. Have you personally been the subject of any criticism or abuse as a result of your being confined in jail in Jackson?

A. Yes.

Q. Can you indicate the quantity of this?

A. I received a letter from Mississippi—

Mr. Watkins: We are going to object to that. The letter would be the best evidence.

The Court: I will overrule that objection. Of course, as to the contents of the letter, that would be the best evidence.

A. And I received a number of comments from persons with whom I'm immediately associated in my work in Boston.

Q. Persons associated with the Episcopal Church?

A. Some, yes.

Mr. Rachlin: I have no further questions.

Mr. Watkins: We have no questions of this witness.

The Court: You may stand aside, Father.

(Witness excused)

[fol. 484] Mr. Rachlin: Your Honor, at this time I would like to call as an adverse witness for the purpose of identifying certain statements made in the deposition, Officer Nichols, one of the defendants in this case.

The Court: Come around, Mr. Nichols.

D. A. NICHOLS, called as an adverse witness and having been duly sworn, testified as follows:

Cross examination.

By Mr. Rachlin:

Q. You are one of the defendants in this case?

A. I am.

Q. Were you present in the Continental Trailways bus station on September 13, 1961?

A. Yes.

Q. Were you there with Officer Griffith when 15 Episcopal clergymen were arrested?

A. Yes.

Q. Did you in your capacity as a police officer participate in the arrest?

A. I did.

Q. Now, do you recall, Mr. Nichols, being present in the office of Mr. Watkins when we took depositions?

A. I do.

Q. Do you recall—referring to Page 6 of your deposition, [fol. 485] do you recall my asking you this question:

"Do you believe it is wrong for whites and Negroes to be together in a bus station?"

And your answer was—

Mr. Watkins: Just a moment, if it please the Court. I am going to object to that question as calling on this witness for a conclusion as to whether he believes it is right or wrong.

The Court: I will overrule the objection and let him give his opinion on that.

Q. And the answer was:

"I believe it is wrong for them to be together anywhere."

Do you remember that question?

A. I remember a question similar to that.

Q. And the next question was:

"Anywhere?"

And your answer was:

"Anywhere."

Do you remember that?

A. Seems like I do.

Q. Now, referring to Page 8 of your deposition, do you recall the following questions asked by me and the answers [fol. 486] given by you:

"Now, could you tell at the time they got out of the cabs whether there were any whites and Negroes together?"

And your answer was:

"I didn't pay that much attention to them."

Do you remember *thatquestion* and answer?

A. Right.

Q. And further on that page, do you recall this question:

"Now, when they got out of the cab, did you see them do or say anything which you considered a breach of the law?"

And your answer was "No, sir."
Do you recall that?
A. Right.
Q. And then, next question:

"Now, at the time they got out of the cabs, what did you do?"

And your answer:

"I walked inside the bus station, started inside."

Remember that answer?
A. I walked back down the ramp and started into the bus station.
Q. Referring to Page 10 of your deposition, do you re-[fol. 487] member the following question:

"Did you observe a crowd of people on the ramp or near the ramp or near the taxicabs?"

Answer: "No, I did not."
Question: "You didn't see any?" "
Answer: "I didn't see any particular crowd."

A. I don't remember those questions and answers.
Q. Well, you have a signed copy. Turn to the top of Page 10 and see whether those are the questions and the answers given by you at that time.
A. That was mine on deposition, and still is.
Q. All right. Now, turning to the bottom of Page 12, do you remember the following question:

"They started to walk toward the restaurant?"

Your answer was:

"They started down toward the restaurant, and so Officer Griffith and I saw the trouble brewing, so he walked over there and stepped in front of them at the restaurant and wouldn't let them in the restaurant."

Do you remember *thatquestion* and answer?
A. They came in the front door—

Q. I'm sorry—
A. They came in the front door—
[fol. 488] Q. Excuse me. I'm asking—

The Court: What he is asking you, Mr. Nichols, was that question asked you and was that the answer you gave at that time?

A. It was.
Q. Referring to Page 17 of your deposition, do you recall the following questions and answers:

"Now, did you know what time they were coming to the station?"

Answer:

"We did not."

Question: "You did not."
Answer: "We did not."
Do you recall those questions and answers?
A. Where is that?
Q. Turn to about five lines down from the top of Page 17.
A. That's correct. Those are correct.
Q. Now, turning to Page 19, do you recall these following questions and answers:

"When you saw them come in, you saw whites and Negroes together?"

Answer: "I saw colored and white together."
Question: "Coming into the 'white only' part of the [fol. 489] station. Is that right?
Answer: "That's right."

Do you remember that question and answer?
A. Those are correct.
Q. Now, turning to the bottom of Page 20, the very last line, do you remember this question and your answers, which are on the next page:

Question: "But you knew that colored people normally were not permitted to eat in the restaurant in the white waiting room? Isn't that right?"

Answer: "I did."

Question: "And you knew they were normally not permitted in the white waiting room?"

Answer: "I did."

Do you remember those questions and answers?

A. Those questions are correct.

Q. Now, turning to the top of Page 23:

Question: "Now, were you there when he placed them under arrest?"

Answer: "I just told them to move on, and they refused my order, and I asked them again, and they refused it. I asked if they understood my order, and they said they did. I asked were they going to obey it, and they said they [fol. 490] weren't."

Do you remember that question and that answer?

A. Correct.

Q. Now, turning to the bottom of Page 24, do you recall the following questions and answers:

Question: "Now, when you called and spoke to Captain Pierce, what did you say?

Answer: "Chief Pierce."

Question: "I'm sorry. Chief Pierce. What did you tell him?"

Answer: "I told him that we had the ministers under arrest at the Trailways bus station and we needed transportation to bring them in."

Question: "Did you tell him there was an ugly mob there?"

Answer: "No, sir."

Question: "You didn't tell him that?"

Answer: "No, sir, not that I remember."

A. Those are correct.

Q. Turning to Page 28, the second line from the top, I ask if you remember the following questions and answers:

Question: "Well, then you never noticed that sign that said 'By Order of the Police Department'?"

[fol. 491] Answer: "No, sir."

Q. I'm sorry—

A. They came in the front door—

[fol. 488] Q. Excuse me. I'm asking—

The Court: What he is asking you, Mr. Nichols, was that question asked you and was that the answer you gave at that time?

A. It was.

Q. Referring to Page 17 of your deposition, do you recall the following questions and answers:

"Now, did you know what time they were coming to the station?"

Answer:

"We did not."

Question: "You did not."

Answer: "We did not."

Do you recall those questions and answers?

A. Where is that?

Q. Turn to about five lines down from the top of Page 17.

A. That's correct. Those are correct.

Q. Now, turning to Page 19, do you recall these following questions and answers:

"When you saw them come in, you saw whites and Negroes together?"

Answer: "I saw colored and white together."

Question: "Coming into the 'white only' part of the [fol. 489] station. Is that right?

Answer: "That's right."

Do you remember that question and answer?

A. Those are correct.

Q. Now, turning to the bottom of Page 20, the very last line, do you remember this question and your answers, which are on the next page:

Question: "But you knew that colored people normally were not permitted to eat in the restaurant in the white waiting room? Isn't that right?"

Answer: "I did."

Question: "And you knew they were normally not permitted in the white waiting room?"

Answer: "I did."

Do you remember those questions and answers?

A. Those questions are correct.

Q. Now, turning to the top of Page 23:

Question: "Now, were you there when he placed them under arrest?"

Answer: "I just told them to move on, and they refused my order, and I asked them again, and they refused it. I asked if they understood my order, and they said they did. I asked were they going to obey it, and they said they [fol. 490] weren't."

Do you remember that question and that answer?

A. Correct.

Q. Now, turning to the bottom of Page 24, do you recall the following questions and answers:

Question: "Now, when you called and spoke to Captain Pierce, what did you say?

Answer: "Chief Pierce."

Question: "I'm sorry. Chief Pierce. What did you tell him?"

Answer: "I told him that we had the ministers under arrest at the Trailways bus station and we needed transportation to bring them in."

Question: "Did you tell him there was an ugly mob there?"

Answer: "No, sir."

Question: "You didn't tell him that?"

Answer: "No, sir, not that I remember."

A. Those are correct.

Q. Turning to Page 28, the second line from the top, I ask if you remember the following questions and answers:

Question: "Well, then you never noticed that sign that said 'By Order of the Police Department'?"

[fol. 491] Answer: "No, sir."

Question: "You never noticed that?"

Answer: "At one time now I know they did have one of them 'By Order of the Police Department' but what they had at that time I don't know."

Question: "Well, if it said 'By Order of the Police Department' would that then be your instructions?"

Answer: "That would be my instruction."

Do you remember those questions and answers?

A. They are correct.

Q. Turning to Page 37 of your deposition:

Question: "Well, now, since Judge Moore has given his opinion, has it caused you to change your view as to whether it was proper to arrest these 15 clergymen?"

Answer: "If they did it again today, I would do the same thing I did that day."

Do you remember those questions and those answers?

A. That's correct.

Mr. Rachlin: I have no further questions of this witness.

[fol. 492] Mr. Watkins: We have none at this time.

The Court: You may stand aside.

(Witness excused)

Mr. Rachlin: Your Honor, at this time I wonder if I might ask Officer Griffith to take the stand.

The Court: Yes.

J. B. Griffith, called as an adverse witness and having been duly sworn, testified as follows:

Cross examination.

By Mr. Rachlin:

Q. Officer Griffith, do you recall your deposition we took in Mr. Watkins office some time ago?

A. Yes, sir.

Q. I wonder if we could ask Mr. Watkins to give you a copy of it.

(Same is handed to witness)

Q. Were you an officer of the Police Department on September 13, 1961?

A. Yes, sir.

Q. Were you present in the Jackson City bus terminal when 15 ministers arrived?

A. I was.

Q. Did you participate with Officer Griffith in the arrest—[fol. 493] sorry—Officer Nichols in the arrest?

A. Yes, sir.

Q. I wonder if I could ask you to turn to Page 6 of your deposition. Do you remember the following questions and *and* answers:

Question: "Do you recall about what time it was when you first saw the 15 Episcopal clergymen who were later arrested?"

Answer: "Around 11:25."

Question: "11:25. At the time you first saw them, were you and Officer Nichols standing together?"

Answer: "Yes, sir."

Question: "Can you tell us where in the station you were standing?"

Answer: "We were standing on the ramp in the back of the station which is on the south side, and we were standing on the east end of the ramp."

Do you remember those questions and answers?

A. Yes, sir.

Q. I ask you to turn to Page 11, if you don't mind.

Question: "Now, when they walked into the building, as you observed them, were they speaking in very loud voices?"

[fol. 494] Answer: "No, sir."

Question: "Did you hear them use any improper language?"

Answer: "No."

Question: "Did you see them threaten any people in the station?"

Answer: "Yes. By the manner in which they entered."

Question: "Well, will you describe what that manner was, please?"

Answer: "The people of the City of Jackson was in a tense mood at that time, and they came in as a group as they did and the other people in the Trailways bus station was in an ugly mood. You could hear some mumbling in their voices and expressions on their faces."

Question: "Now, what did they say or do which threatened anybody?"

Answer: "The ministers didn't actually make a threat. Just a—"

Do you remember those questions and answers?

A. Yes, sir.

Q. Do you remember the following questions and your [fol. 495] answer on Page 12?

Question: "Did you ask any of them . . ." referring to the other people in the station, ". . . to leave the station?"

Answer: "No."

Do you remember that question and answer?

A. Yes.

Q. The question on the same page:

"Now, you say those people as being in an ugly mood?"

Answer: "Yes, sir."

Question: "Did they say anything?"

Answer: "No."

Question: "These people did not say anything?"

Answer: "No."

Question: "Did they have threatening gestures?"

Answer: "Yes."

Question: "Did you arrest any of them?"

Answer: "No."

Do you remember those questions and answers?

A. Yes, sir.

Q. On page 16:

Question: "How many of the people in the station out- [fol. 496] side of the 15 ministers, how many of them would you say were mumbling?

Answer: "Oh, I don't know. I just noticed maybe two or three of them mumbling, kind of saw them jabbering a little to each other."

Question: "Two or three of them."

Answer: "Off at a distance, something like that."

Do you remember those questions and answers?

A. Yes, sir.

Q. Now, on the bottom of Page 17, do you remember this question and this answer:

Question: "Would the trouble be caused by anything that the ministers said or did?"

Answer: "Just their presence there."

Do you remember that question and answer?

A. Yes.

Q. And going over to the top of the next page:

Question: "Their presence there, but not anything they said or did?"

Answer: "No, they didn't say anything."

Question: "The trouble would be caused by other people? Is that correct?"

Answer: "Yes."

[fol. 497] Do you remember those questions and answers?

A. Yes, sir.

Q. And at the bottom of the same page:

Question: "You thought that the people of the City of Jackson would attack ministers?"

Answer: "Yes."

Do you remember that question and answer?

A. Yes, sir.

Q. In the middle of Page 20, do you remember this question and this answer:

Question: "Then was it Officer Nichols who said to them, 'You're under arrest'?"
Answer: "No. I placed them under arrest."

Do you remember that question and answer?
A. Yes, sir.
Q. Do you remember on Page 22 the following question and answer, near the top of the page, third line down:

Question: "Their presence there and the citizens of Jackson not liking it?"
Answer: "Yes, sir."
Question: "It had nothing to do with the fact that they were a group of 12 white and three Negro clergymen?"
[fol. 498] Answer: "No, sir."

Do you remember those questions and answers?
A. Yes, sir.
Q. On the bottom of Page 25 and the top of Page 26, the following:

Question: "It wasn't until they arrived in cabs that you decided to go into the bus station?"
Answer: "Yes."

Do you remember that question and answer?
A. Yes.
Q. Now, on Page 31—I stand corrected. I wonder if I could ask you to turn back to the bottom of Page 27. I omitted something which I wanted to include.
A. The bottom of 27?
Q. The very bottom of Page 27 and the top of Page 28, the following questions and answers:

Question: "Was there anything they said or did which might make you think that these 15 clergymen would commit violence upon you?"
Answer: "No."
Question: "You weren't worried about that, were you?"
Answer: "No."

[fol. 499] Question: "You weren't worried about them committing violence against anybody in the station either, were you?"

Answer: "No."

Do you remember those questions and answers?

A. Yes, sir.

Q. On Page 31, do you recall the following questions and answers:

Question: "Now, if a Negro walks in that part of the station, he is asked to leave? Isn't that right?"

Answer: "Not all the time, no. It is according to whether he violates any law or not."

Question: "It is according to whether he is violating the law?"

Answer: "Yes. If he comes in drunk or something like that, he is placed under arrest and carried out."

Question: "And if he is quiet and doesn't say anything to anybody, he will be allowed to stay?"

Answer: "It's according to how the crowd reacts."

Question: "Yes. So if the crowd reacts, then you will ask them to leave? Is that right?"

Answer: "Yes."

Do you remember those questions?

[fol. 500] A. Yes.

Q. Page 34, do you remember the following questions and answers:

Question: "Can you tell me any time, to your knowledge, when a Negro went in that part of the station when he had not been arrested?"

Answer: "Not to my knowledge, no."

A. (Witness makes no comment)

Q. I'm sorry, I never got for the record whether you remember that question and answer.

A. Yes, I remember.

Q. I ask you, Officer, to turn to Page 40, and do you recall the following questions and answers, fourth line down:

Question: "And Captain Ray came in?"
Answer: "Yes."
Question: "Did he ask you whether you had placed them under arrest?"
Answer: "No."
Question: "Did you tell him they were under arrest?"
Answer: "No."

Do you remember those questions and answers?
A. Yes, sir.

[fol. 501] Q. Now, Officer, may I ask you to turn to Page 46 of your deposition, about the middle of the page. Do you recall the following questions and answers:

Question: "Well, the crowd that you say was following them in the station, they didn't have any regular business in the station, did they?"
Answer: "Not that I know of."
Question: "Why didn't you ask them to leave?"
Answer: "We were concerned about the ministers at the time. We had determined that they might be the cause of violence."
Question: "Well, why didn't you—they weren't going to commit the violence, were they?"
Answer: "The ministers?"
Question: "Yes."
Answer: "I don't know."

Turn over to the next page, next to the very top line, and continuing:

Question: "Well, did they look like they were going to commit any?"
Answer: "No."
Question: "It was the other people who looked like they were going to commit violence? Is that right?"
[fol. 502] Answer: "Yes."

Question: "Well, why didn't you ask them to leave?"

Answer: "We had determined that the ministers was the cause of the violence if any might occur."

Question: "They would be the cause of the violence because they were standing in the station?"

Answer: "Because of their presence there."

Question: "Because of their presence in the station? Is that right?"

Answer: "Because they were there."

Do you remember those questions and answers?

A. Yes, sir.

Q. Do you remember the very last question and answer on the bottom of Page 49 and the top of Page 50:

Question: "Do you think it is wrong for whites and Negroes to come into a bus station together?"

Answer: "Yes."

Do you remember that question and answer?

A. Yes, sir.

Mr. Rachlin: I have no further questions of this witness.

Mr. Watkins: We have none at this time.

The Court: You may stand aside.

(Witness excused)

[fol. 503] J. L. Ray, called as an adverse witness and having been duly sworn, testified as follows:

Cross examination.

By Mr. Rachlin:

Q. I am going to call you Chief Ray.

A. Either way will be all right.

Q. I am going to read, so you'll forgive me if I read it in the way it is in the record. It is not meant to demote you in any way.

A. That's all right.

Q. Do you mind turning to Page 6?

A. (Witness does same)

Q. (Reading) Question: "Chief Ray, both Officer Griffith and Officer Nichols weren't able to describe the sign in front of the white waiting room at the Trailways bus station. I wonder if you can tell us what it says. Can you recall?"

Answer: "Yes, sir. It says 'White Waiting Room Only, By Order of the Police Department.' I believe that is the wording."

Do you remember that question and answer?

A. I do.

Q. On top of Page 7, if you don't mind:

[fol. 504] Question: "So that was the orders then to Officer Griffith and Officer Nichols? Isn't that right? 'By Order of the Police Department, White Waiting Room Only'?"

Answer: "No, sir, not necessarily."

Question: "That was not their orders?"

Answer: "No, sir."

Question: "What did the sign mean?"

Answer: "That sign is there for people to use. In other words, they have a choice. It isn't against the law to go in either waiting room."

Question: "Well, don't you think if it says 'By Order of the Police Department' people might think they don't have a choice?"

Answer: "I believe that's what the court ruled and that's the reason of this change, but it was just for a matter of choice."

Question: "What was the choice if the sign read 'By Order of the Police Department'?"

Answer: "Well, people—in other words, people that chose to use that, they did and it's very—it is normal and people usually go by the signs."

Do you remember those questions and answers?

[fol. 505] A. I do.

Q. Now, Chief, please turn to Page 19, near the middle of the page. Do you remember the following questions and answers as given by you:

Question: "Let's get back to the point where you came into the station. Now, you described how you saw the ministers over near the concession and near the door to the restaurant, didn't you?"

Answer: "That's correct."

Question: "They were not saying anything at that time, were they?"

Answer: "No, sir."

Question: "And they weren't threatening anybody, were they?"

Answer: "Their being there had caused a threat."

Question: "What was there about their standing where they were that was a threat?"

Answer: "As I have already described, they were an advertised group, and I have already told you that has been almost a month since the Freedom Riders were there and people were back kind of peaceful, kinda', and of course, when this advertised group came out in the paper and through the radio, there was a tense situation again, and [fol. 506] they thought it was another movement of Freedom Riders. We had worked real hard to prevent any violence, and we didn't want to start again."

Do you remember those questions and answers?

A. I do.

Q. On Page 21, do you remember this question and answer:

Question: "Did you ask or did you station any officers on the sidewalk in front of the entrance to keep the entrance clear?"

Answer: "No, we didn't know where they were going."

Do you remember that question and answer?

A. Yes, sir, but may I add something? It's a lot of other questions prior to that.

Q. You will discuss that with Mr. Watkins then.

A. Good.

Q. I am asking you to turn to the middle of Page 24:

Question: "It was just their presence in the station that caused the trouble?"

Answer: "That is correct."

Question: "Nothing they said or did caused any trouble?"

Answer: "That is correct."

Question: "Just their presence?"

[fol. 507] Answer: "That is correct."

Do you remember those questions and answers?

A. I do.

Q. On Page 29:

Question: "Now, were you in any meetings with the mayor on this subject?"

Answer: "Yes. He told— You mean on this particular subject?"

Question: "Not on the ministers, but on the people arrested in the bus station."

Answer: "Yes."

You remember those questions and answers?

A. I do.

Q. Please turn to Page 33:

Question: "Now, when you came into the station, you didn't speak to any of the people in the station, did you?"

Answer: "No, sir."

Question: "So you didn't know for certain what was bothering them, did you?"

Answer: "Yes, I did."

Question: "How did you know?"

Answer: "Well, the focus point was the ministers over [fol. 508] in that corner."

Do you remember those answers and questions?

A. I do.

Q. Further on that page:

Question: "And you say you didn't speak to any of the people in the crowd?"

Answer: "No, I didn't."

Question: "Did you hear what they were saying?"

Answer: "No, I didn't."

Do you remember those questions and answers?

A. I do.

Q. I ask you to turn to Page 37, Chief, if you don't mind.

Question: "You say the crowd was in an ugly mood. You didn't ask any of them why they were in an ugly mood, did you?"

Answer: "No. It was evident to me."

Question: "Did you ask either Officer Griffith or Officer Nichols whether anything special had happened that you ought to know about?"

Answer: "I didn't."

Question: "You just assumed that they were the ones?"

Answer: "It was evident that that was it."

[fol. 509] Question: "Now, they didn't make any insulting or rude or obscene remarks, did they?"

Answer: "No."

Do you remember those questions and answers?

A. I do.

Mr. Rachlin: I have no further questions of Chief Ray.

Mr. Watkins: No questions at this time.

The Court: Very well, stand aside.

(Witness excused)

The Court: At this point, Gentlemen, we will take a recess until nine o'clock tomorrow morning.

Under the instructions I have heretofore given you, I will let you separate and be back at nine o'clock tomorrow morning.

(Whereupon the court was recessed until the following morning.)

[fol. 510] Volume IV

Thursday, May 16, 1963, at 9:00 A.M. the trial was resumed.

James L. Spencer, called as an adverse witness and having been duly sworn, testified as follows:

Cross examination.

By Mr. Rachlin:

Q. Judge Spencer, I am just going to refer to various pages of your deposition and ask you whether they were the questions you heard and the answers you gave. There possibly may be one or two other questions, but it will be very brief, in any event.

May I refer you to Page 5 of your deposition given in Mr. Watkins' office, and I ask you to look at the following questions and answers:

Question: "And when was it you became a judge?"

Answer: "On July 1, 1958, I believe. I was appointed police justice and ex officio justice of the peace for the City of Jackson, Mississippi."

Question: "I take it that is not an elective job?"

Answer: "No, sir."

Do you remember those questions and answers, sir?

A. I do.

Q. I assume if I asked the same questions, you would give [fol. 511] the same answers?

A. That is correct.

Q. May we consider that applicable to all of these questions and answers?

A. That is correct.

Q. May I ask you to turn to Page 18 of your deposition:

Question: "And you heard him . . ." referring to Chief Ray, ". . . heard him testify both today and at that time that they didn't use any profanity or obscene language?"

Answer: "That is correct."

Question: "Nor did they say anything which should disturb anybody. You heard him say that too?"

Answer: "That is correct."

Question: "Nor did they, from his testimony, commit any of the common acts which we consider breach of the peace, like spitting on the sidewalk or being drunk or anything like that. There was none of that involved in this case?"

Answer: "None of the examples you mentioned, no."

You heard those questions and answers, Judge?

A. Yes.

Q. Now, may I ask you to turn to Page 20 of the deposition.

Do you remember these questions and answers:

[fol. 512] Question: "Was there any evidence in the record that they said anything or did anything?"

Answer: "In the bus station?"

Question: "In the bus station."

Answer: "No. Only such as was related by Captain Ray."

Question: "That wasn't disorderly in itself, was it?"

Answer: "No, sir."

You remember those questions and answers, Judge Spencer?

A. That's correct.

Q. Now, I ask you to turn to Page 21:

Question: "Suppose a police would make an unreasonable order. Does a citizen have a right to disobey that order?"

Answer: —

Mr. Watkins: —Just a moment. I am objecting to that question and any answer that may have been made to it. It involves a hypothetical question not involved in this case and calls on this witness for a legal conclusion.

The Court: Read the questions again, please.

Mr. Rachlin: Before I read it, may I just say one word, if you don't mind?

[fol. 513] The Court: Yes, sir.

Mr. Rachlin: This was the judge who presided over these plaintiffs here—defendants then. And I think what his position as a judge is goes to the heart of his position here as a defendant.

There were three questions, and I will read the series of questions without giving the answers, if you don't mind.

The Court: Just let me see it.

(Same is handed to Court)

The Court: You want me to read some questions before?

Mr. Rachlin: No, that isn't necessary. Just beginning with the pencil mark there.

(Court reads same)

The Court: Sustain the objection to that.

Mr. Rachlin: This goes to the very heart of the case.

The Court: This is incompetent; just an agreement between you and him up there as a judge. I sustain the objection to that, very clearly, because that is not competent. You were asking him to give an opinion which is up to this Court and jury to decide that.

Mr. Rachlin: No, I am sorry, Your Honor. That is [fol. 514] precisely not the fact.

The Court: I tell you, Mr. Rachlin, as I told you yesterday, I don't want to say anything in the presence of the jury other than to rule. So I sustain the objection.

Mr. Rachlin: Your Honor, I offer to make a—

The Court: Yes, you can offer it in evidence and let it be marked.

Mr. Rachlin: I offer the entire deposition in evidence.

Mr. Watkins: We object to that. He may offer the page or the questions, which he is now trying to put in and has been ruled out by the Court.

The Court: I believe under the Rules he is entitled to offer the entire deposition, but that part will be excluded because it is not competent, and it will not go to the jury; but if he wants to—

Mr. Watkins: My point is, Your Honor, that there are many other incompetent questions.

The Court: Well, I am going to rule upon each one of them and exclude those that are incompetent, if that's what he wants. Now, if he just wants to preserve that particular point there, he can offer that page and let the court reporter mark it and become a part of the record, [fol. 515] but it will be excluded—

Mr. Watkins: That is my point. He could have the court reporter mark any number of specific pages, but not the entire deposition.

The Court: If he desires to offer the entire deposition, as I recall it, the pretrial deposition of a party to a lawsuit may be offered by the plaintiff.

Mr. Watkins: For impeachment purposes only, Your Honor, if the witness is present.

The Court: Let me get that rule first.

Mr. Rachlin: I am going to ask to cross examine Judge Spencer now as an adverse witness, Your Honor. I think under the Rules I am permitted to do so.

The Court: Are you withdrawing your offer of that?

OFFERS IN EVIDENCE

Mr. Rachlin: No. At this moment, I offer this page, the series of questions and answers I showed to you.

The Court: All right. Let the court reporter mark the page.

(Pages 21 and 22 of the deposition were marked as Plaintiff's Exhibit No. 6, which Exhibit follows here below.)

[fol. 516]

EXHIBIT PLAINTIFF #6 (PAGE 1)

WITNESS SPENCER

MAY 15 1963

Q. Suppose a police would make an unreasonable order. Does a citizen have the right to disobey that order?

A. I would think the citizen's proper procedure would be to obey the officer and later seek redress.

Q. But not to disobey the order?

A. I know I certainly wouldn't.

Q. But do you think, regardless of what you or I or Mr. Watkins might do, or anybody else might do, do you think that a citizen has the right to disobey an improper order of a police officer?

A. I would answer that— Are you speaking from a legal standpoint or just my opinion?

Q. I am speaking to you as a judge now. Suppose there was a case in which it was clear that the order of the policeman to move on was improper?

A. I will say that I have never researched the law on that point, but my opinion, without researching the law, (Plaintiff Exhibit 6, Page 2) would be that he should obey the officer.

Q. Regardless of whether the order is improper or not, he should obey the order?

Mr. Rachlin: In view of that, I will have to cross ex-[fol. 517] amine Judge Spencer as an adverse party.

The Court: Now, you offered that part of the deposition that you desired to introduce and withdrew your offer of the entire deposition?

Mr. Rachlin: That's right.

The Court: Very well. I will sustain the objection to that part of the deposition offered in evidence, and it will not be received in evidence, but the court reporter will mark it as an exhibit and it will become a part of the record in the case.

You may now proceed.

(Mr. Rachlin continues)

Q. Now, Judge, what was the sentence you passed on the plaintiffs in this case? Do you recall?

A. The sentence of four months in jail and pay a $200.00 fine.

Q. Now, I ask you to turn to Page 24 of your deposition. Do you remember the following questions and the answers you gave:

Question: "Now, you were the one who was the trial judge in many of these so-called Freedom Riders' cases?"

Answer: "Yes, sir."

Question: "In fact, you tried all of them, didn't you?"

Answer: "I believe so."

[fol. 518] Question: "Now, in the first cases you tried, what was the sentence that you passed? Do you recall?"

Answer: "In the first cases, there were suspended sentences, if I recall correctly."

Do you remember those questions and answers?

A. Yes, sir.

Q. By the way, how many of those so-called Freedom Riders' cases did you try?

A. I have never actually counted them, Mr. Rachlin. I hear other people in the courtroom talking about approximately 300. As far as actual trials are concerned, it would be a number much smaller than that because, by agreement of counsel, they would be tried in groups rather than individually. So of the 300, my estimate would be there were maybe some 50 trials.

Q. 50 trials, or approximately 300 people? Is that correct?

A. That would be a guess, Mr. Rachlin.

Q. And how many of them were acquitted?

A. I don't know—

Mr. Watkins: —If it please the Court, I am going to object to this. All of this is a matter of record.

The Court: Yes, sustain the objection.

Q. I ask you to turn to the bottom of Page 27 of your deposition.

[fol. 519] Question: "Well, now, you, of course, as a citizen of Jackson were aware of the police sign in front of the entrance of the station, weren't you?"

Answer: "No, sir, I wasn't. I'll say, frankly, that I don't think I've been in the bus station once in the last five years."

Question: "Well, you knew that Captain Ray had described that there was such a sign in front of the station?"

Answer: "Yes."

Question: "And you heard it repeated again, in substance, today? I don't recall if he used the same words, but in substance he said today what he said in the initial trial? Isn't that right?"

Answer: "Yes."

Question: "And that it said, 'White Only, By Order of the Police Department'?"

Answer: "He said there was a sign of some similar words. His exact words, I don't recall."

Question: "Yes. But in substance, what I have just described, in substance?"

Answer: "That is correct."

Question: "Well, now, if it's an order of the Police Department to maintain white only, wouldn't it be wrong for a Negro citizen to go into that room?" [fol. 520]

Mr. Watkins: Just a minute. We object to that question. It calls for a legal conclusion.

The Court: Yes, sustain the objection.

Mr. Rachlin: Your Honor, this is the judge who tried the case. We have got to know—

The Court: —I know who he is, and I sustain the objection. Now, you can offer it in evidence and let the court reporter mark it, and it will not be received in evidence but will be a part of the record.

Mr. Rachlin: Your Honor, I would like to make it clear that we are not re-trying the initial case.

The Court: I understand this whole thing, so let the record be complete there.

(Same was marked as Plaintiff's Exhibit No. 7, which Exhibit follows here below:)

Exhibit Plaintiff's #7 (page 1)

Witness Spencer

May 16 1963

Q. Well, you knew that Captain Ray had described that there was such a sign in front of the station?

A. Yes.

Q. And you heard him repeat it again in substance today? [fol. 521] I don't recall if he used the same words, but in substance he said today what he said in the initial trial, isn't that right?

A. Yes.

Q. And that it said "White only—by order of the Police Department"?

A. He said there was a sign of some similar words. His exact words, I don't recall.

Q. Yes. But in substance, what I have just described—in substance?

A. That is correct.

Q. Well now, if it is an order of the police department to maintain white only, wouldn't it be wrong for a Negro citizen to go into that room?

A. I don't believe so. I cannot cite you any authority, (Plaintiff's Exhibit #7 (page 2)) and I never made a study of the cases because no such case has ever been presented to me, but I have a vague recollection that both the Supreme Court and the Interstate Commerce Commission have passed on that question. No case has ever been presented to me involving that question.

***

(Mr. Rachlin continues:)

Q. Now, Judge Spencer, you heard Captain Ray describe yesterday, and you heard him describe in the deposition, [fol. 522] and in Mr. Watkins' office, and you heard Captain Ray describe his testimony before you. Now, in each one of those situations, he told you what the sign was in front of the building, didn't he?

Mr. Watkins: I object to that on the ground it is improper to call on a witness to comment or to present to a witness the testimony of another witness.

Mr. Rachlin: I'm asking if he heard the testimony.

The Court: I will overrule that objection and let him answer if he heard the testimony.

A. Mr. Rachlin, I believe that in the trial in *minicipal* court you cross examined Captain Ray on that question, and I believe he did describe it at that time. In the taking of the depositions in Mr. Watkins' office, as you mentioned, I believe he described it at that time. Those are two instances I remember Chief Ray describing the sign.

Q. Weren't those questions read to him yesterday, and didn't he acknowledge that those were his answers again?

Mr. Watkins: He is asking what another witness testified.

The Court: Yes, sustain the objection.

Q. You were also present when the two other officers testified in the depositions and when they were here yester- [fol. 523] day? Is that right?

A. Yes.

Q. When a policeman acts in pursuance of that sign, I take it he is acting on the order of the City of Jackson?

Mr. Watkins: Object to that as calling on the witness for a legal conclusion.

Mr. Rachlin: He is a judge. We are entitled to ask a legal conclusion of a judge.

The Court: Just a moment. I sustain the objection, Mr. Rachlin, because the fact that he was the judge is immaterial. It is a question of law for this court to decide now, and what his opinion is is of no evidentiary value to this court and jury and is incompetent.

Mr. Rachlin: Your Honor, I would like to be heard on this, because I think there is a great misunderstanding as to what we are trying in this case.

The Court: No, I understand thoroughly what we are trying.

Mr. Rachlin: But, Your Honor, if you will permit me, sir, we have to try his state of mind at the time he tried this case. We are not trying his conclusions as to whether they are sound or not, but what they were at the time he tried this case, whether under the circumstances, these [fol. 524] plaintiffs here got a fair trial.

The Court: His state of mind is immaterial in this case. He was a judge confronted with a serious proposition; and if he made an error, it's an error of judgment upon his part, for which there would be no responsibility against the judge and would throw no light whatsoever upon this lawsuit; so I sustain the objection.

Now, you have your question in, you have your answer, the man is on cross examination, and the record is complete.

Mr. Rachlin: He is being tried on two counts, Your Honor. He is being tried—

The Court: I understand, Mr. Rachlin. Now, let's don't quibble, because I have ruled and we will just lose time. I could send the jury out for you to state what you propose to show, because as to an adverse party, you don't have to state for the record in order to get a review as to what you propose to show. And I am perfectly satisfied that I am correct in my ruling.

Mr. Rachlin: I would like, Your Honor, to ask for the jury to leave the room for a moment so that I could state on the record the point of law I think is relevant at this very moment.

[fol. 525] The Court: I decline to do that for the reason that under the law of this circuit and the State of Mississippi you are entitled to the most favorable answer you could possibly get from a personal review, so there is no need for you to state it on the record and consume that much time. Let's go on.

Q. Page 37 of the deposition:

Question: "You know that Judge Moore disagreed with you, don't you?"

Mr. Watkins: We object to that—

Mr. Rachlin: I haven't finished the question.

Mr. Watkins: Please stop between the question and the answer.

Mr. Rachlin: Ill do that. Just ask me.

Q. (Continuing:)

Question: "You know that Judge Moore disagreed with you? You know that, don't you?"

Mr. Watkins: We object to that as immaterial.

The Court: Yes, sustain the objection.

Mr. Rachlin: Well, if he knows, he will have the right to test his memory.

The Court: I sustain the objection, Mr. Rachlin.

Q. Next question:

[fol. 526] "You know he reversed the conviction?"

Mr. Watkins: We object to that as immaterial.

The Court: Sustain the objection.

Q. Question: "Based upon his reversal, if you were presented with this case, would you convict the people again?"

Mr. Watkins: We object to that.

The Court: Sustain the objection.

Mr. Rachlin: All right. Please give the stenographer your Page 37. I'd like to have that marked.

Mr. Watkins: I object to the introduction of any questions other than those which he propounded to the witness to which objections were sustained. There are other questions on the page other than those he propounded to the witness. My objection is based on the fact that he began with "You know Judge Moore. . ." The question above that is objectionable, which is a question which reads: (reads same).

Mr. Rachlin: Well, I can read them all. That's simple enough.

The Court: Just a moment. Do you object to the introduction of that page, Mr. Watkins?

Mr. Watkins: Yes, sir.

The Court: Sustain the objection.

[fol. 527] Mr. Rachlin: I would like to read the questions as an offer of proof and let Mr. Watkins object to each.

The Court: You will not read any more on this page. I have sustained the objection to the entire page.

Mr. Rachlin: I have an offer of proof, don't I? I can have them marked for identification, can't I?

The Court: The plaintiff having offered in evidence Page 37 of the deposition of the witness, Judge Spencer, and counsel for the defendants having objected to the introduction of the testimony on that page, the Court now sustains the objection, and it will not be received in evidence but will be marked as Exhibit 8 of the Plaintiffs and will become a part of the record, but not considered as received in evidence.

(Same was marked as Plaintiff's Exhibit No. 8, which Exhibit follows here below:)

EXHIBIT PLAINTIFF'S #8 (page 37 only)

WITNESS SPENCER

MAY 16 1963

Q. Now, how long have you lived in the City of Jackson?

A. I came back from law school in '47 and have been here continuously since.

Q. Do you know the people of Jackson moderately well?

A. I think so.

[fol. 528] Q. Do you seriously believe that under the circumstances described here that the citizens would have physically attacked fifteen members of the clergy?

A. Unquestionably, I think so.

Q. You know that Judge Moore disagreed with you, don't you? You know that, don't you?

A. No, I do not know that.

Q. You know he reversed the conviction?

A. I understand he reversed the conviction.

Q. Do you know that he reversed it on the grounds that the elements of the case weren't proved?

A. I don't know that. I don't know if any written opinion was given. All I know of that trial was what I read in the newspaper.

Q. Well, based upon his reversal, if you were presented with this case again, would you convict the people again?

A. Under the circumstances and the testimony which was given in the trial, I would.

•••

(Mr. Rachlin continues cross examination:)

Q. Now, Judge Spencer, when you were sitting in judgment upon the plaintiffs in this case and taking into account your knowledge of the statute that was involved at that time, can you tell us the circumstances under which a citi- [fol. 529] zen may refuse to obey an order of a policeman?

Mr. Watkins: Object to that.
The Court: Sustain the objection.

Q. Does a citizen ever have the right to disobey the order of a policeman?

Mr. Watkins: We object to that.
The Court: Sustain the objection.

Q. Is a citizen who refuses to obey the order of a policeman ever not guilty?

Mr. Watkins: We object to that as calling for a legal conclusion.
The Court: Sustain the objection.

Q. Are there circumstances under which a citizen who refuses to obey an order of a policeman under Section 2087.5 of the Mississippi Code of 1942 as Amended ever—

Mr. Watkins: We object to that as calling for a legal conclusion.

The Court: Sustain the objection.

Counsel, in order to expedite or go along with this case, I am not going to permit you to ask any more questions asking his opinion of the law. Now, any facts you want to ask, why you can proceed as far as you desire to go on cross examination of this witness, but you have your rec- [fol. 530] ords complete now and I have ruled out any questions that call for a construction of law by this defendant, because it's the duty of this Court to announce to the jury what the law is that controls the case.

Q. Judge Spencer, what is the term of your office?

A. The statute creating my office prescribes no term, Mr. Rachlin. However, there is another statute, disconnected with the statute creating my particular office, which says all public officials shall hold office for four years or until their successors are duly appointed.

To answer your question more briefly, the statute creating the police justice position states no term of office.

Q. You were appointed in what year?

A. 1958.

Q. So that more than four years have elapsed? Is that correct?

A. That is correct.

Q. And then is it your understanding that your appointive authority—that is, the mayor and commissioners —have the right to appoint a successor at any time? Is that correct, sir?

Mr. Watkins: If it please the Court, we are going to object to this. The occurrence which took place and is com- [fol. 531] plained about occurred within the four years of his original appointment, and it is immaterial as to whether or not—what the situation is as of this moment.

The Court: Yes, sustain the objection.

Mr. Rachlin: Your Honor, I am trying to prove conspiracy. It is not necessary, as Your Honor well knows, in the Federal courts and elsewhere, that the acts of the conspiracy themselves be spelled out, but that the triers of fact may draw any reasonable inference from the facts that they can. If I can show that the mayor and the commissioners—

The Court: Very well. You have stated now what you are trying to prove, and I hold that what has happened since that time is immaterial, and will sustain the objection.

Q. You heard the mayor testify yesterday?—

Mr. Watkins: We object to that. It's immaterial.

The Court: I will let him answer that.

A. Yes.

Q. —That he and the commissioners have the right to appoint your successor?

Mr. Watkins: Your Honor, he is asking what the mayor [fol. 532] said yesterday. That is highly incompetent.

The Court: Yes, sustain the objection.

Mr. Rachlin: How is that incompetent? He was here.

Mr. Watkins: One witness can't quote another one. The jury heard the mayor testify. They know what he said.

The Court: Very well, Gentlemen. Sustain the objection. Proceed.

Q. Judge Spencer, you read from some book during the course of giving your decision when you convicted the plaintiffs in this case, didn't you?

Mr. Watkins: We object to that as immaterial, Your Honor.

Mr. Rachlin: It's a question of fact.

The Court: Sustain the objection. It is immaterial whether he read from a book or whether he didn't.

Mr. Rachlin: Well—

The Court: Very well. I won't argue with you. I sustain the objection.

Q. Now, do you recall this:

"And we hold it to be the duty of all men who are professors of the Gospel to pay respectful obedience to the [fol. 533] civil authorities regularly and legitimately constituted—"

Mr. Watkins: —We object to that.

The Court: Sustain the objection. You are reading from a Bible or Prayer Book or something there which is immaterial to the issues in this case.

Mr. Rachlin: Your Honor, it is not immaterial. This shows he came in with a determination to convict these people.

The Court: Sustain the objection.

Mr. Watkins: I ask that counsel's remark be stricken from the record, Your Honor, that the judge came in with determination to convict anybody. There is no basis for that.

The Court: I sustain that motion, and the jury will disregard that statement by counsel.

Q. Page 39 of the deposition; do you remember this question?

"What was the name of the book that you quoted from during the course of your giving your opinion?"

Mr. Watkins: We object to that as immaterial.

The Court: Yes, sustain the objection.

Q. Question: "Do you remember the full title?"

Mr. Watkins: Object to that, as immaterial.

[fol. 534] The Court: Sustain the objection.

Mr. Stennett: Further, that is reading from what Your Honor ruled a while ago is incompetent.

The Court: I have sustained the objection. No need to argue it further.

Q. Question: "Do you normally have it in court?"

Mr. Watkins: We object to that as immaterial.

The Court: Sustain the objection.

Q. Question: "Was this the first time you ever had it in court?"

Mr. Watkins: Object to that as immaterial.

The Court: Sustain the objection.

Mr. Rachlin: At this point, I would like to make an offer of proof of the last two questions on Page 39 and the answer, and the top four questions and answers on Page 40 of Judge Spencer's deposition.

The Court: Very well. Were those the same questions you asked to which I have sustained objections?

Mr. Rachlin: Yes, sir.

The Court: Very well. You may offer them and I will let the court reporter mark them as exhibit, and they will become a part of the record, but they are not received in evidence as part of the case.

[fol. 535] Mr. Rachlin: I understand.

The Court: Let the court reporter mark them. (Same was marked as Plaintiff's Exhibit No. 9, which Exhibit follows here below:)

EXHIBIT PLAINTIFF 9

WITNESS SPENCER

MAY 16 1963

Q. Now, you had with you the— What was the name of the book that you quoted from during the course of your giving your opinion?

A. Prayer Book.

Q. Do you remember the full title?

(Plaintiff Exhibit 9 (page 2)).

A. No. I just refer to it as the prayer book. It's the prayer book used by the Episcopal Church in the services, setting forth the services, the articles of religion and the matters pertinent to the church.

Q. Was that your own copy?

A. Yes, sir. In fact, it had my name engraved on it. It was presented to me when I was confirmed.

Q. Six years ago?

A. Yes.

Q. Do you normally have it in Court?

[fol. 536] A. No, sir.

Q. Was this the first time you ever had it in Court?

***

Q. I would like you to turn to Page 43 of the deposition.

Question: "Now, these people were charged with an offense under the criminal law, weren't they?"

Answer: "Yes."

Question: "They weren't charged with any offense of any canon law, were they?"

Answer: "Well, perhaps you misunderstand my purpose in reading that article of religion. I did not read that article from the standpoint of judging guilt or innocence."

Question: "Well, why did you read it?"

Mr. Watkins: We object to that as immaterial.

The Court: Yes, sustain the objection.

Mr. Rachlin: I would like to have at least the answer on Page 43, the last long answer on Page 43, offered.

The Court: Very well. Let it be offered and marked as an exhibit, but the objection will be sustained and it will become a part of the record but not received in evidence.

[fol. 537] (Same was marked Plaintiff's Exhibit No. 10, which Exhibit follows here below:)

EXHIBIT PLAINTIFF #10

WITNESS ....

MAY 16 1963

A. I was there facing fifteen priests of my faith. I was reading it from the standpoint of my sitting in legal judgment on them; that under the articles of religion they were there as individuals, not as clergy; that they submitted themselves to the jurisdiction of the civil magistrate. My purpose in quoting that article of religion was addressed to the proposition of whether I, as an Episcopalian, should have been the one to try it, and regardless of their guilt or innocence.

***

Mr. Rachlin: As I understand it, there was not an objection to the two previous questions I read? The objection was only to the answer to the third question? I wanted to clarify that. Those two are in the record?

Mr. Watkins: The record so shows I made an objection to the third question.

Q. Judge Spencer, the first two questions, those were the answers you gave? Is that correct?

A. I'm sorry. I didn't hear your question.

Q. Those two questions that Mr. Watkins did not object to—

Do you know the ones I am referring to? I'll go over them again.

(Counsel reads first question and answer again)

[fol. 538] That was your answer?

A. Yes.

Q. (Counsel reads second question and answer)

You remember that answer?

A. Yes.

Q. Now, at the bottom of the page:

Question: "Didn't you actually say in court that these priests were guilty of violating that article?"

Mr. Watkins: We object to that.

Mr. Rachlin: It's a question of what he said, Your Honor.

The Court: Sustain the objection as immaterial and irrelevant.

Mr. Rachlin: I would like to offer in evidence for the record the last question on the bottom of Page 43 and the answer on Page 44.

The Court: Let it be marked by the reporter and given an exhibit number and it will become a part of the record, but it will not be received in evidence. The objection is sustained as to its being received in evidence.)

(Same was marked as Plaintiff's Exhibit No. 11, which Exhibit follows here below:)

[fol. 539] EXHIBIT PLAINTIFF #11

WITNESS SPENCER

MAY 16 1963

Q. Didn't you actually say in Court that these priests were guilty of violating that article?

A. I believe so, and that was as stated in my opinion.

***

Mr. Rachlin: I have no further questions.

The Court: Do you have any questions, Mr. Watkins?

Mr. Watkins: Not at this time.

The Court: Ver- well. You may stand aside, Judge Spencer.

(Witness excused)

LAYTON P. ZIMMER, called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. Mr. Zimmer, where do you live?

A. Swarthmore, Pennsylvania.

Q. With whom do you reside?

A. My wife and two children.

[fol. 540] Q. Are you an Ordained priest of the Episcopal Church?

A. Yes, sir.

Q. When did that ordination take place?

A. In June of 1956, to the priesthood.

Q. Were *your* part of the prayer pilgrimage in September, 1961, that was proceeding from New Orleans to the general convention in Detroit?

A. Yes, I was.

Q. And do you recall some of the stops that were scheduled to be made or were in fact made on that prayer pilgrimage?

A. Yes.

Q. Can you tell us what they were, if you recall?

A. The first stop at a school, an Episcopal school, on the outskirts of New Orleans; a stop for noonday prayers and buying Coca-Cola in McComb; a—

Q. McComb, Mississippi?

A. Yes. A stop in Vicksburg for evening prayer in the chapel, a talk with the head of the school and tea in his home, to which he invited us; and—

Q. Were all of the members of the prayer pilgrimage involved in the tea at this time?

A. Yes. The invitation he gave us was to the whole group, and we all were received very graciously by him and [fol. 541] his wife.

Q. Do you remember who he is?

A. Presently bishop of this diocese, a bishop co-adjutor of this diocese, Allen.

Q. How many white and Negro members of the pilgrimage were there, if you recall?

A. At the beginning there were, I believe, four Negro members and 24 whites.

Q. Did the now bishop co-adjutor receive all together at tea?

A. Yes.

Q. He didn't ask any of them to leave the room?

A. No.

Q. And what did you do after you left the school at Vicksburg?

A. Returned to the bus, drove down the highway—I don't remember the highway number—came into the outskirts of Jackson, drove around and out to Tougaloo.

Q. Tougaloo?

A. Southern Christian College.

Q. A few miles from where we are right now?

A. Yes.

Q. Did all of you stay in Tougaloo that night?

A. Yes.

Q. Now, was there a decision made to separate the two [fol. 542] groups at that time?

A. That evening?

Q. Yes.

A. Yes, we discussed—

Q. What group were you going to go to?

A. I was, as the only alumnus of Sewanee, to go to Sewanee.

Q. Tell us briefly what Sewanee is.

A. The University of the South, Sewanee, Tennessee, is 10,000 Episcopal acres on top of the last really large mountain in the Blue Ridge chain. A beautiful place. It comprises undergraduate college, university, and a seminary, St. Luke's School of Theology. I attended St. Luke's School of Theology in 1952-53.

Q. So that a number of you were going to go to Sewanee?

A. Yes.

Q. When did you expect to leave Jackson to go to Sewanee?

A. The seven of us decided our best timing would be to leave here at night, stop for a meal in Atlanta, and our concern then, since we knew at Sewanee we would not be able to eat together, would be not to eat again until we had talked with the people there and done what we could to witness to our concern.

Q. Now, on the day of September 13th, was it your plan [fol. 543] to remain in Jackson?

A. Yes, we planned to remain in Jackson to see what people we could. I personally planned—hoped to see the then Rector of St. Andrews whom I have known for several years. This turned out to be impossible—

Q. —That is the church across the street from this courtroom?

A. Yes.

Q. Yes.

A. And for me, it was to be a generally relaxed day until we left in the evening.

Q. Now, you knew, of course, that 15 of your associates on the pilgrimage were going to plan to leave Jackson to go to Chattanooga? Is that correct?

A. Right.

Q. Did you know approximately what time their bus was to leave the Continental Trailways bus station?

A. At noon or shortly after, I believe.

Q. Approximately?

A. Yes.

Q. Now, in this group of 15, did you know of your own knowledge was this all white people or were there any Negroes?

A. Oh, it was a mixed group.

Q. A mixed group?

[fol. 544] A. Yes.

Q. Well, had you read or heard that mixed groups of people had been arrested in the bus station, the Continental Trailways bus station, in Jackson?

A. For some months before.

Q. Now, did you go to the bus station, the Continental Trailways bus station, on the morning of September 13th?

A. Late in the morning of September 13th.

Q. Approximately what time did you arrive there? Do you recall?

A. Yes. With a friend, I arrived at the bus station about twenty-five minutes of twelve, twenty-five minutes before noon.

Q. Who was with you at the time?

A. The Reverend Malcolm Boyd, Chaplain to the Episcopal students at Wayne State University.

Q. Where is Wayne State University?

A. Detroit.

Q. What did you do when you entered the bus station?

A. We came in from the street. I don't know the name. Past the recruiting sign, through the doors, debated whether we wanted a cup of coffee, decided no. We hoped to see our friends off, and both noticed at that time that TIME magazine that week had an article, a lead article, cover article, on J. D. Salinger, who is a favorite author of [fol. 545] both of us, so we bought a copy of TIME and sat down and began to look through it.

Q. Shortly thereafter, did you observe the four plaintiffs in this case—that is, Mr. Morris, Father Breeden, Father Jones, and Father Pierson—together with other Episcopal priests, enter the station?

A. Yes.

Q. Were you sitting in some part of the station at this time?

A. Yes.

Q. Did you observe their manner when they walked into the station?

A. Yes.

Q. Can you describe what it was?

A. They walked in, looked confused at first, looking around from one side to the other. We started to recognize them, and they turned to go to—

Q. "They"? You mean—

A. The 15. Our friends. They turned, and whether they saw us or not, I do not know, and walked toward the restaurant.

Q. Had you started to get up and go to them?

A. Yes, I did.

Q. What happened at that moment?

A. There were policemen suddenly. I don't know how many.

Q. What happened?

[fol. 546] A. They said, "You can't go in here."

Q. Did you hear that?

A. I heard that.

Q. How far were the policemen when this was *was* said?

A. Oh, a good 20 or 30 feet.

Q. Was this said in a fairly loud tone?

A. No.

Q. It was said loud enough so you could hear it?

A. Yes, but I mean no anger or—

Q. —It wasn't shouted?

A. No.

Q. And it wasn't in anger?

A. No.

Q. At the time this was said, you heard the police officer say that, did you observe any unusual number of people following your 15 associates into the station?

A. No.

Q. At the time this was said, did you hear any unusual hubbub or noise in the station?

A. No.

Q. Did you observe any of the persons in the station by gesture or word threaten any of these people?

A. No.

[fol. 547] Q. Did you see anything in the station which indicated that there was about to be trouble in the station?

A. Quite the contrary. Definitely quiet.

Q. It was quiet?

A. Yes.

Q. After you heard the officer say "Wait a minute" or "Hold up" or whatever the words were, please describe to us what you yourself saw and heard thereafter.

A. I recognized John Morris' voice saying, "We are interstate bus travelers trying to get to Chattanooga. We would like lunch before we go."

Q. Was this said in an angry tone?

A. No.

Q. Was it said in a moderate tone?

A. Yes.

Q. Please go ahead.

A. The policeman said again, "You can't go in there," referring, I surmise, to—

Q. Don't surmise.

A. "You can't go in there." John Morris repeated again, "We are interstate bus travelers on our way to Chattanooga, and we would like something to eat before we go." And the next words I heard was "Move along." And then [fol. 548] "You are under arrest."

Q. When you heard "You are under arrest," who said it? Do you recall?

A. One of the policemen, I suppose.

Q. Don't suppose.

A. I know, yes.

Q. It was one of the policemen?

A. Yes.

Q. I don't want to chastize you, but you're not allowed to suppose or imagine. You can only testify as to what you saw and heard.

A. Yes. I heard the words, "You are under arrest."

Q. Now, at that time was there any particular or unusual noise or hubbub in the station?

A. The silence in the station continued until one of the clergy began to say the Lord's Prayer, in which the others joined in.

Q. Approximately how long does it normally take to say the Lord's Prayer?

A. Less than a minute.

Q. I assume you are familiar with it.

A. Yes. Less than a minute.

Q. Did you observe any hostility among people in the sta- [fol. 549] tion while this was being said?

A. Quite the contrary. Two young men stopped still in their tracks and listened. Before I bowed my own head, I saw one of the two elderly ladies sitting next to us bow hers, and the silence continued.

Q. You actually observed that?

A. Yes.

Q. And these old ladies didn't threaten the priests, did they?

A. No.

Q. Did the two young men threaten the priests?

A. No.

Q. Did you observe what took place thereafter?

A. One of the officers went to a desk, information desk, used the phone and called some place. Shortly after, Captain Ray came in, said words which I did not clearly understand, and the group began to move out to the loading platform.

Q. This was after Captain Ray arrived?

A. Yes.

Q. You couldn't hear what he said?

A. No.

Q. I guess he spoke in a very quiet voice?

A. Yes.

Q. At the time he appeared in the station, did you observe [fol. 550] any unusual noises or any hostility on the part of the persons in the station?

A. No.

Q. Was the station still quiet?

A. The station was still quiet. The two young men whom I had earlier observed continued their walk through the station out to join a group of men, I believe, joining the Air Force.

Q. In other words, there were some people going out to take off on a military—

A. A large grey bus with a non-commissioned officer in charge, lining these young men up and putting them on the bus.

Q. You observed that?

A. Yes.

Q. That was the only activity in the station?

A. Yes.

Q. Did you see then Captain Ray—now Chief Ray—take them out of the station?

A. Yes.

Q. Was that the last that you saw?

A. No. We both got up and walked at first by their sides, and then fell behind as they crowded through the doors and then out to the loading platform and then out to the drive-[fol. 551] way.

Q. What did you observe then at the back of the station?

A. There were more people outside; people from the Negro waiting room came out.

Q. How far away was it?

A. The Negro waiting room?

Q. Yes.

A. Well, the door to it was about 10 or 15 feet to the left as you came out the rear door, the loading platform door, of the white waiting room.

Q. Was there any more hostility at this time?

A. Again, quite the contrary.

Q. Tell us what you actually saw and heard.

A. A young woman crying, saying "Oh, Oh, Oh."

Q. You saw this yourself?

A. A young Negro woman who came out of the waiting room. A short man who came up to about my shoulder, just watching impassively. Those are the impressions that stay in my mind. I was rather emotional at this point myself.

Q. You were rather disturbed?

A. Deeply disturbed.

Q. Did you see them taken away in the paddy wagon?

A. Yes.

[fol. 552] Q. At this time what kind of clothes were you wearing?

A. What kind of clothes was I wearing?

Q. Yes.

A. A white shirt, open at the neck, no coat, grey trousers.

Q. Was this a method of dress fairly common to you?

A. With me.

Q. Under what circumstances do you dress in that manner?

A. When my wife doesn't have my collar shirts ironed; when I go on vacation; when I relax; oftentimes when I make parish calls in homes.

Q. When you visit your parishioners, you call sometimes in non-clerical garb?

A. Yes.

Q. This is not unusual for you to dress that way?

A. Not for me.

Q. Are you permitted to dress in common fashion if you choose under the circumstances?

A. We have complete freedom.

Mr. Rachlin: No further questions.

Cross examination.

By Mr. Watkins:

Q. Mr. Zimmer, how many churches have you served as priest in charge?

[fol. 553] A. This one.

Mr. Rachlin: I object to the question, Your Honor, as being completely irrelevant. This is either a witness good or bad to certain events; it is unimportant how many churches he has served.

The Court: Overrule the objection. He is entitled to go into the background to a reasonable degree.

Q. What is the church, the one church?

Mr. Rachlin: Objection.

The Court: Overrule.

A. Trinity Episcopal Church, Swarthmore, Pennsylvania.

Q. How long did you serve that church as priest in charge?

A. As of this date?

Q. Yes.

A. Four and a half years.

Q. Before you came on the pilgrimage, you received certain communications from Reverend John B. Morris, the

Executive Director of the Episcopal Society for Cultural and Racial Unity, did you not?

A. Yes.

Q. I hand you Exhibits 2, 3, 4, 6, 7, 8, 9, 10, and 5 of the defendants, and I ask you if you did not receive and were not familiar with each of those before coming on the pil- [fol. 554] grimage.

Mr. Rachlin: I object to the question. Mr. Watkins seems to forget that this man is not a party to this proceeding. He is a witness to a certain fact, and whether he saw or did not see those documents offered previously, submitted in evidence, is of complete irrelevance.

The Court: Overrule the objection.

A. I didn't understand the first part of your question.

Q. Did you receive and were you familiar with each of those documents before you started on the pilgrimage?

A. I believe so, yes.

Q. Then, Reverend Zimmer, you were familiar with the facts and had been advised by Reverend Morris in these documents, for instance, that your group had been offered assistance by CORE, weren't you?

A. Yes.

Q. You were familiar with the fact that—

Mr. Rachlin: Excuse me. I have an objection to all questions of this type?

The Court: Yes, you may have a standing objection to questions of that type. The objection is overruled and you will not waive your objection by failure to renew it from time to time.

[fol. 555] Q. You were familiar with the fact that Reverend Morris had publicized to you a statement in support of your pilgrimage issued by Reverend Martin Luther King, Jr.?

A. Yes.

Q. You were familiar with the fact that certain assistance had been either sought or offered by other organizations, weren't you?

A. It has been over two years, and I don't remember the detailed contents of the letters. If I may check them?

Q. It's not important enough for you to go through the group. That would take some time. Do you recall that there were other organizations, such as the Living Church, the NAACP, that had either offered or Reverend Morris thought you would get assistance from them on your pilgrimage?

A. My impression as I remember—

Q. That's the best you can do.

A. —is that we were concerned about support from the NAACP. I remember no arrangements with the Living Church.

Q. Then you remember specifically only the NAACP and CORE?

A. Yes.

Q. As the supporting organizations?

A. Not as "supporting." I don't like the word. I would say—

[fol. 556] Q. Assisting?

A. Concerned.

Q. Interested?

A. Yes.

Q. And, of course, Martin Luther King, Jr.'s organization was also interested or supporting you?

A. I knew he as a person was, but I did not know the SCLC.

Q. You knew he was head of that organization?

A. Oh, yes.

Q. You knew also from your advance notices that there was some indecision as to how many of your group was to go to jail, didn't you?

A. You ask me that, and I can only honestly say that in my mind there was no intent for anyone to go to jail. There was no question of number.

Q. Well, let me ask you about one of these exhibits. I refer you to Exhibit 6, which is a communication, one of the communications you have identified as having received, dated August 4, 1961, which was more than a month prior to your trip, wasn't it?

A. Yes.

Q. Now, I refer you to a sentence on Page 4 of that communication which reads as follows:

[fol. 557] "In the present context of things we will want to send at least ten of the pilgrimage participants to jail."

Do you remember that?

Mr. Rachlin: I'd like him to read the rest of that. I think he has the right to read whether that was in the context or out of the context or how it was used under the circumstances. I think it is not fair unless he has a chance to read the document.

Mr. Watkins: I think I am entitled to an answer on this question. Then if he wants to read it further, he may do so.

The Court: I will let him answer the question, and then he can read any part of it that he desires.

Q. Do you remember that sentence, "In the present context of things we will want to send at least ten of the pilgrimage participants to jail"?

A. No.

Q. You did not read these very carefully when you received them?

A. I was on vacation during the whole month of August.

Q. I see. Then if you had seen that sentence—

Mr. Rachlin: Objection. That is quite hypothetical.

The Court: Yes, I sustain the objection to that.

[fol. 558] Q. Do you recall being told by Reverend Morris, in Exhibit 7, dated August 19, 1961, not to be surprised if the arresting officers in Jackson were polite?

Mr. Rachlin: It's irrelevant. What difference does it make? We are not trying the manners of Captain Ray.

The Court: He is nodding his head that he didn't, so I will sustain the objection.

Q. I ask you if you read the sentence at the bottom of Page 4 of Exhibit 7. Have you ever read that sentence before?

A. I have read a paraphrase of that in the newspaper last night.

Q. That would be the first time you have seen it?

A. I do not remember the sentence as such in the correspondence, no.

Q. Then you had not received or gone over all of these communications from Reverend Morris?

A. I am sure I did. I am sure I read them in a different light than that in which you read them.

Q. Let me ask you if you remember receiving Exhibit 8, dated August 26th. Were you familiar with that before the trip?

A. You want me to glance at the whole letter?

Q. Enough of it to satisfy yourself that you had seen it and were familiar with it before the trip. Read as little or as much as you like.

[fol. 559] A. I can't answer for this specific letter, but again, it fits into the whole picture of my memory, yes.

Q. Let me direct your attention to a particular sentence. The letter first calls attention to the fact that Morris had information that bonds had increased from $500 to $2000 for arrest being made in Jackson, Mississippi. Is that correct?

A. Yes.

Q. You remember that. Do you remember this sentence:

"There are many possibilities but at the present it looks like it may be the better part of valor to consign only a dozen men to jail."

Do you remember that?

A. Again, the sentence itself does not stick, but certainly this fits into the context of it.

Q. That's what I thought. Who was consigning them to jail?

A. This is why I used the word "context." No one.

Q. During your visit with Bishop Co-Adjutor Allen at All Saints College at Vicksburg on September 12, 1961, did he not urge your group not to come to Jackson, Mississippi?

A. In my memory, no.

Q. Are you saying he did not or you don't remember?

A. I am saying that I do not remember that he did. What [fol. 560] I remember he said was quite different from that.

Q. Where was the decision made to divide your group into two groups?

A. As we talked at Tougaloo, each one speaking about where his own conviction would lead him, where he felt our most Christian witness could be, the group fell into three.

Q. What were the three groups?

A. One group to try to use the commonly used means of transportation and get to Chattanooga by bus; one group to talk to people in town; and whether the bus group of not was successful in leaving Jackson, then to leave by a different means of transportation to assure somebody could get to Chattanooga and then to Sewanee; and if the bus group was unsuccessful in leaving Jackson, some wished to stay and pray.

Q. Can't we say quite frankly to each other that you made a decision that night as to which ones were going to jail and which ones weren't?

A. No, sir. You can't say that to me, and I can't answer yes to that, because my whole concern as an individual was a witness in Christ's name that, God willing, in Federal territory would not lead to anyone's going to jail. We realized the risk, of course.

[fol. 561] Q. But I have read you two sentences from John Morris' letters to you and the other members of the group, in which he speaks in explicit terms as to how many are going to jail, haven't I?

A. Yes, you have.

Q. And that wasn't discussed that night?

A. Well, I think just as in the letters, this fact had come up that it was no more a binder on our concern either as to measuring up to a certain number to ride a bus or cutting down to a certain number to ride the bus.

Q. Did you discuss that night at Tougaloo how many were or were not going to jail?

A. No, sir, we did not set a number to meet, because going to jail was not the concern of the group.

Q. You were familiar with the fact that there had been a radio and press build-up of your trip since it had started in New Orleans, weren't you?

A. People in New Orleans assured us that there had been no coverage as of the morning we left, September 12th. I believe that's when the first announcement that we could not control, broke. It was to our advantage not to have a publicity campaign. This again was not our concern. I was not aware, having spent all of the 12th in a bus, what kind [fol. 562] of newspaper or radio publicity there may or may not have been.

Q. Did you not hear it on radio or television in Jackson either the night of the 12th or the morning of the 13th, the fact that you were present in Jackson?

A. I heard a news announcement in which the pilgrimage was mentioned, I believe, the morning of the 13th, and again, immediately after the bus station, I heard another newscast.

Q. Tuesday night, what decision was made with respect to what you personally would do the next day, the 13th?

A. What decision was made as to what I personally would do?

Q. Yes.

A. I wanted to go to the bus station and was allowed to do so because three of my classmates from the seminary and at least one other close friend were trying to go by bus to Chattanooga. After that, I would wait until the best time to leave by airplane for Atlanta, where we would have our final meal, and then off to Sewanee.

Q. What time did you plan to leave for Atlanta in the airplane?

A. Was in the late evening, close to midnight.

Q. What was the purpose of your going to the Trailways bus station between eleven and twelve o'clock that morning [fol. 563] on the 13th?

A. I was concerned about my friends.

Q. You were worried about them, weren't you?

A. Yes.

Q. And you went to the bus station in what I would call layman's clothes, as distinguished from clerical garb, didn't you?

A. Yes, sir.

Q. Did Reverend Boyd do the same thing?

A. Yes.

Q. So it was your purpose that you not be recognized as a clergyman there on that occasion, wasn't it?

Mr. Rachlin: Object to the question. There is nothing in the record to indicate that.

The Court: Overrule the objection. He may answer.

A. One aspect, yes. Not my purpose.

Q. You went there as an observer, didn't you, to see what was going to happen?

A. I went there as a friend, as an observer, yes.

Q. You wanted to be dressed so as not to be connected with your friends who wore clerical garb?

A. Yes.

Q. Reverend Morris has spoken of this pilgrimage in [fol. 564] some aspects as a military expedition. If we put it in military terms, you were there as a spy, weren't you?

Mr. Rachlin: I object to that.

The Court: Sustain the objection.

A. No, sir.

Mr. Rachlin: Your Honor, I ask Mr. Watkins not to inflame the jury.

The Court: Well, you make your objections and I will rule on them.

Q. Did you ever make your presence known to the police in the bus station, that you were one of the members of the clergy group?

A. No.

Q. After that, a few days after that on or about September 15th, you did tell Captain Ray of the Jackson Police Department that in the station you were very much concerned about some men who had been playing at the pinball machine, didn't you?

A. No.

Q. Did you make any similar statement to Captain Ray?

A. If I remember our conversation, I disagreed with his estimate of the number of people and their activities there at that time.

[fol. 565] Q. Did you tell him that you were concerned about anybody in the station?

A. No, sir.

Q. There was an atmosphere of emotion present in the station, was there not?

A. There was an atmosphere of emotion present in me. I was able only to observe objective facts about numbers of people and what they were doing. I could not evaluate mood.

Q. I believe you testified on direct that had, before coming to Jackson, heard of the arrest of the Freedom Riders in Jackson. Is that correct?

A. Yes.

Q. You had also heard, had you not, of the violence which accompanied the Freedom Riders' visit to Alabama?

A. Yes.

Q. And it was that fear of the same violence in Mississippi that they had received in Alabama that gave you real concern about your friends in Jackson, didn't it?

Mr. Rachlin: I object to the question. There is no establishment that there has been any violence in Jackson. In fact, Mr. Watkins has made great point all along to show there wasn't any. So I think the question is improper.

[fol. 566] The Court: Overrule the objection.

Q. It was that violence in Alabama that made you concerned about what might happen to your friends in Mississippi, wasn't it?

A. No, sir.

Q. What did give you concern about the welfare of your friends in Mississippi?

A. I am an American and a Christian, and it hurts me that my friends are, in my eyes, so falsely handled as they were here.

Q. Then you were not concerned about any physical violence?

A. No. I heard shortly before I came down, in LIFE magazine, that Captain Ray did a good job, and as I told Captain Ray afterward, I agreed he keeps the peace.

Q. You know, don't you, if it had not been for Captain Ray and his men, we would have had violence in Jackson as they had in Alabama with the Freedom Riders?

A. Not on September 13th.

Q. What do you mean by that, having done a good job?

A. In the terms in which you are couching the questions, he had kept violence out of the scene.

Q. And that is important?

A. Yes.

[fol. 567] Q. That is what you wanted and what I wanted, wasn't it?

A. That was not, is not, the concern about which we had been speaking. As I told you, violence did not even enter our thoughts at that time.

Q. Reverend, is Sewanee an Episcopal school?

A. Yes.

The Court: I believe we will take a ten minute recess at this point.

(Whereupon the court recessed for ten minutes)

After Recess

(Mr. Watkins continues:)

Q. I believe you told me Sewanee is an Episcopal school?
A. Yes, I did.
Q. Did you make your trip to Sewanee?
A. Yes.
Q. I believe you also said on direct that you would not be permitted to eat together there because you were a mixed group?
A. In the school, yes.
Q. Was that the case when you did visit Sewanee?
A. Yes.
Q. And you did not attempt to overrule the decision of the person in authority at that school as to whether you [fol. 568] would be permitted to eat as a mixed group there, did you?
A. On that specific trip?
Q. Yes.

Mr. Rachlin: Does this make any difference? I move this—

A. I must say that—

Mr. Rachlin: Hold it.
The Court: Overrule the objection.

A. I was called back to Jackson for the first hearing and was not there for even the passage of time of the second meal. I do not know.

Q. From what you said on direct, I assumed that you personally would not physically oppose any decision reached by the head of that school as to whether a mixed group would or would not eat together there.

Mr. Rachlin: I move this is irrelevant.
The Court: Yes, I will sustain the objection as to what he would do.
Mr. Watkins: I have no further questions.

The Court: Any redirect?

Mr. Rachlin: I have just one or two, if you don't mind.

[fol. 569] Redirect examination.

By Mr. Rachlin:

Q. Mr. Zimmer, Mr. Watkins has gone into some length to your purposes and showed you references to numerous documents. I wonder if you would tell us in your own words what your purposes were in making the prayer pilgrimage.

Mr. Watkins: If it please the Court, I don't think that is redirect. I asked him about specific statements contained in specific letters to him from Morris. Now, he is just going back— We're going to have to sit here and listen for another thirty minutes.

The Court: I'll overrule the objection to that question. You may answer.

A. I went on the prayer pilgrimage as a Christian priest, as a Christian, as an American, as a human being. I served a God who is Love, who loves all men, whose son Jesus Christ died for all men—

The Court: Let's see, Father. The question was, what were your purposes in going? What were your purposes?

A. Obedience to what I understand my Christian mandate to be; to minister, to witness, to live, speak and act as [fol. 570] prophetically, conscientiously, clearly as I can; to show in my life what our Lord would have me and everybody show.

Q. Was it ever your intention or, insofar as you know, the intention of anyone on the prayer pilgrimage to be arrested in Jackson or elsewhere?

A. No.

Mr. Rachlin: No further questions.

(Witness excused)

Mr. Rachlin: I assume that the Court would, of course, take judicial notice of the various statutes and laws referred to in the Complaint?

The Court: Yes.

Mr. Rachlin: Both as to laws of the United States and the laws of Mississippi.

The Court: Yes.

Mr. Rachlin: Now, Your Honor, at this moment the plaintiff rests.

Mr. Watkins: The defense would like to make a motion.

Now comes the defendant James L. Spencer and respectfully moves the Court to direct the jury to return a verdict [fol. 571] for the said defendant on the grounds that the evidence affirmatively shows that he is the judge of the state court and his jurisdiction would be immune to any liability under any circumstance in this case, and that therefore he should at this time be dismissed from the case.

The Court: Motion is overruled.

Are you ready to proceed, or do you want a little time?

Mr. Watkins: Yes, sir, we are ready.

The Court: Whom will you have?

Mr. Watkins: We will call Chief Ray.

J. L. Ray, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

Q. Please state your name.

A. J. L. Ray.

Q. Your age?

A. 43.

Q. Are you a native of Jackson or where were you born and raised?

A. I was born in Mississippi, Choctaw County. I spent most of my childhood in Holmes County, Mississippi.

[fol. 572] Q. How long have you lived in Jackson?

A. Approximately 28 years.

Q. On September 13, 1961, what position, if any, did you hold with the Police Department of The City of Jackson?

A. Captain of police.

Q. Do you hold that same position today?

A. No, sir.

Q. What position do you hold?

A. Deputy chief of police.

Q. How long have you been associated with the Jackson Police Department?

A. Almost 22 years.

Q. Chief Ray, was the summer and fall of 1961 normal or abnormal for the Jackson Police Department?

Mr. Rachlin: Objection, Your Honor. We are trying a case on September 13, 1961, and not other times.

The Court: Overrule the objection.

A. Very much abnormal.

Q. Why?

Mr. Rachlin: Objection.

The Court: Overrule the objection. You may have a standing objection to that type of question if you desire, or you can make individual objections to the questions.

[fol. 573] A. That was the year of, I would say, the invasion of Freedom Riders to Alabama—

Mr. Rachlin: I object to the word "invasion."

The Court: Yes, I will let him choose another word.

Q. Substitute "visit," if that is satisfactory to Mr. Rachlin.

Mr. Rachlin: I would prefer the words "persons exercising their constitutional rights."

The Court: Go ahead and answer the question and state what happened and what the circumstances were that made it abnormal.

A. That was the year the Freedom Riders descended upon the State of Alabama, which led to riots, bloodshed, and later that year they descended upon Jackson, which caused the city to be a very tense city and very much turmoil in the city.

Q. Do you recall when the plaintiffs and other ministers were arrested in the Trailways bus station on September 13, 1961?

A. I do.

Q. Did you have any advance notice of their coming to Jackson?

A. Yes.

Mr. Rachlin: Objection.

The Court: Overrule the objection.

[fol. 574] Mr. Rachlin: This is pure hearsay.

The Court: I don't care to hear any argument, Mr. Rachlin. Make your objections, and I will rule upon them. The objection is overruled.

Q. What advance notice did you have, Chief?

Mr. Rachlin: Objection.

The Court: Objection is overruled.

A. We knew about two days prior to their arrival that they had gathered in New Orleans and was going from New Orleans by way of Vicksburg and then into Jackson.

Q. Was there any mention of those activities on the part of those ministers on radio, press, television?

Mr. Rachlin: Objection.

The Court: Overrule.

A. Yes, sir. All news media carried that information.

Q. Do you know how the people of Jackson reacted to that proposed visit?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule.

Mr. Rachlin: How could he possibly know?

The Court: Well, I think I could tell you, but I think it would be improper for me to say so, so I will just overrule the objection.

[fol. 575] A. Yes, sir. In my dealings with the populace of the City of Jackson, there was very much resentment to this.

Mr. Rachlin: Object as not being responsive.
The Court: Overrule.

Q. Tell the Court and jury what occurred at the time of the arrest of the ministers on September 13, 1961.

Mr. Rachlin: I object to the question on the grounds the testimony has already indicated, from the officers themselves, that he was not there at the time they were arrested, and therefore his testimony would be incompetent, irrelevant and immaterial.

The Court: Overrule the objection. What he knows from his own personal knowledge.

A. I arrived at the Trailways bus terminal about 11:30 or 11:35. As I approached the terminal from the rear through the lot there, I was approached by a gentleman as I was entering there, and he told me that I had better hurry and get inside, that there was going to be some serious trouble. I immediately walked into the terminal, and it was an unusual amount of people in the terminal, and they were in a very dissatisfied and ugly mood, I would call it. And the focus point was near the entrance to the cafeteria, where a group of 15 ministers were standing.

[fol. 576] Mr. Rachlin: Your Honor, I object to the last part of this man's answer on the grounds that he couldn't possibly have known what the focus point and what the large number of people, as he has testified, in the bus terminal.

The Court: Overrule the objection.

A. At this time I determined the cause of the trouble, which I determined to be these—

Mr. Rachlin: Your Honor, I object to the statement of what he determined. We are not concerned with the processes of his mind. We are only concerned with what he did or said.

The Court: Overrule the objection.

A. I determined the cause of the trouble to be these ministers, and at that point I approached them, trying to remove the cause and make the situation back to normal. And as I approached them, I ordered to move on and move out of the terminal.

Q. Let me interrupt you. Were the four plaintiffs in the case four of the 15 ministers you are telling us about?

A. They were.

Q. Go ahead.

A. I approached them, ordered them to move on and [fol. 577] move out of the terminal. At that point Mr. Morris says, "We can't." I gave the order again, the same order, and at that time he told me that "All we want to do is get something to eat and catch our bus." I told him that I would be happy to see him safely on the bus and to follow me. He says, "We can't." I gave the order again, and he said, "We can't." I says, "Then you refuse to obey my order?" He says, "That's right." And the others indicated the same. I then told them they were under arrest, asked them to follow me, and at that time they were very willing to follow me. We walked out the rear door, the same one I had entered, walked east on the ramp, and as we walked down the ramp, a group of people followed us out, and at that point I pointed this group of people out to them and, since they were ministers, I remembered one of the Beatitudes, "Blessed are the peacemakers," and I quoted that to Reverend Morris, and I said, "You're not making peace." We walked on to the end and waited for the paddy wagon. At that time Reverend Morris pulled out his Testament or Prayer Book and began to read from what I recognized to be some of Paul's writings about "Put on the whole armor of God." While we were waiting there, he was still reading. The paddy wagon pulled up, [fol. 578] the other ministers didn't respect him enough to wait till he got through.

Q. What did they do?

A. They began to crowd into the wagon.

Q. Did you try to avoid arresting the ministers on that occasion?

Mr. Rachlin: I object to that question, Your Honor. What he did is the only thing of importance in this case.

The Court: Overrule the objection.

A. Yes. I gave them orders several times, hoping they would obey my orders. I didn't want to arrest a bunch of preachers.

Q. Why did you arrest them?

Mr. Rachlin: Object to the question.

The Court: Overrule the objection.

A. The circumstances was there that was such that had I not removed the cause or the root of the trouble, there would have been violence and possibly bloodshed.

Q. What would have occurred if you had not arrested them when you did?

Mr. Rachlin: Object, Your Honor. That is purely speculative.

The Court: I'll let him give his opinion.

[fol. 579] A. My opinion is that there would have been violence.

Q. Did the colors of their skin have anything to do with the arrests?

A. No, sir.

Q. Did the place of the arrest have anything to do with the arrest?

A. No, sir.

Q. If they had congregated on the public sidewalks under the same circumstances and had refused to disburse, what would you have done?

Mr. Rachlin: Objection, Your Honor. This is not the facts of the case before us.

The Court: Overrule the objection.

A. Under similar circumstances, had they been anywhere in the City of Jackson, I would have handled it the same way.

Q. Tell the Court and jury whether members of both races were arrested in the same location for the same reason.

Mr. Rachlin: Objection, Your Honor. We are trying this case and not other cases. Therefore, the question has nothing to do with this case.

The Court: Overrule the objection.

A. Repeat the question.

Q. Tell the Court and jury whether members of both races were arrested in the same location for the same reason.

A. Yes, sir.

[fol. 580] Q. Did race have anything to do with the arrests?

A. No, sir. It was the circumstances.

Q. Please tell the Court and jury whether these arrests were discussed by you with Judge Spencer at any time before they were made.

Mr. Rachlin: Your Honor, this is self-serving, as well as being incompetent, and the other reasons I have stated.

The Court: Overrule the objection.

A. I had no discussion with Judge Spencer.

Q. Did he have anything to do with the arrests?

A. He did not.

Mr. Rachlin: I object to that.

The Court: Overrule the objection.

Q. Were these arrests of the plaintiffs or the plaintiffs discussed with Judge Spencer at any time before the cases were tried in municipal court?

Mr. Rachlin: Objection, Your Honor. To prove a conspiracy, it isn't necessary that there be conversations with Judge Spencer, and what's more, this witness is incompetent to testify as to whether there was or wasn't. It is self-serving.

The Court: Overrule the objection.

[fol. 581] A. Repeat that question.

Q. Were the arrests or the plaintiffs discussed with Judge Spencer at any time before they were tried in municipal court?

A. No, sir.

Q. Did you testify in the municipal court?

A. I did.

Q. Did you testify in the county court?

A. No, sir.

Q. After the arrests were made, did you have occasion to talk to Reverend Zimmer, who appeared here as a witness today?

A. I did.

Mr. Rachlin: Your Honor, this covers a time subsequent to the arrest, subsequent to the trial, and therefore—

The Court: I will overrule the objection, to that question, anyway. I assume he intends to impeach the testimony by laying the predicate to a question propounded to Reverend Zimmer.

Q. Did Reverend Zimmer say anything to you with respect to the conduct or atmosphere in the bus station at the time of the arrest with respect to any individuals in the station?

A. He did.

[fol. 582] Q. What did he say?

A. We discussed the tense situation down there and the number of people in the terminal. He told me he was very much concerned with especially two men near the pinball machine.

Q. When did this conversation take place?

A. That's while we were on the outside. The rule had been invoked, and we were outside as witnesses.

Q. Where?

A. At the municipal court.

Q. That would have been on the 15th of September?
A. I believe that is correct.

Mr. Watkins: I believe that is all.

Cross examination.

By Mr. Rachlin:

Q. Chief Ray, when you entered the station on the 13th, did you speak to either of the defendants, Officer Griffith or Officer Nichols?
A. No, sir, I did not.
Q. You did not ask them what had taken place before you got there?
A. No, I didn't.
Q. Of course, you didn't know what took place before you got there?
[fol. 583] A. That is correct.
Q. Did you see these defendants commit any disorderly act?
A. Yes, sir, they refused to obey my orders—
Q. I asked, before you spoke to them. Did you see them commit any disorderly act before you spoke to them?
A. Other than their presence there was such it caused a threat.
Q. Other than their presence, they did nothing disorderly, did they?
A. That is correct.
Q. Did you hear any obscene language?
A. No, sir.
Q. You didn't hear them shout or scream?
A. Not like you're doing, no, sir.
Q. And they were very quiet, weren't they?
A. That is correct.
Q. And they behaved in a perfectly proper manner, didn't they?
A. That is correct.

Q. And they behaved like gentlemen all the time, both before and after the arrests, didn't they?

A. I wouldn't say that, no sir.

Q. They weren't gentlemen?

A. No, sir. Had they been wanting to do what was right, they would have obeyed my order.

[fol. 584] Q. That would have made them gentlemen?

A. They wouldn't have wanted to cause trouble, that's correct.

Q. Are you certain they wanted to cause trouble?

A. Had they not, in my opinion they would have obeyed my orders.

Q. If they had obeyed your *oders*, that would have been all right?

A. In other words, with the circumstances that had developed, yes.

Q. What was it that caused you to be anxious about their appearance in the bus station?

A. To be anxious?

Q. Yes. What were you anxious about?

A. Explain the "anxious."

Q. What were you disturbed about as you walked into the bus station?

A. I was disturbed because the circumstances in there were such that this group of ministers had caused the people to be in a turmoil, they were—

Mr. Rachlin: I object to the answer as not responsive.

The Court: Overrule.

Q. Proceed.

A. Well, that's the answer.

Q. Did you speak to any person inside the bus station [fol. 585] other than the plaintiffs and the other policemen?

A. No.

Q. Did you ask any person in the bus station other than the plaintiffs to leave the bus station?

A. No, but I would like to explain why.

Q. I didn't ask you that. You didn't speak to a single person in the bus station?

A. No, sir, and I would like to explain why.

The Court: Very well. You can go ahead and explain.

A. I was concerned with the cause of the trouble, and I didn't feel like a delay was proper at that time. I wanted to get that cause out, which was this group of Episcopal ministers.

Q. You didn't even try to ask other people in the bus station to leave?

A. No, sir.

Q. You wanted to remove them for their safety? Is that the idea?

A. I wanted to prevent bloodshed and violence and riot.

Q. You didn't think they were going to commit bloodshed against anybody else, did you?

A. No, sir, but—

Q. Bloodshed committed against them. Isn't that correct?

[fol. 586] A. Can I go ahead and answer?

The Court: Give him time to answer the question.

A. I didn't want them to cause bloodshed and violence. I didn't want anybody to get hurt, the ministers or anybody else.

Q. I will ask you again: Did you think they were going to commit violence against you or anybody else in the station?

A. At the time, no, but their presence there was a threat, and that was the cause of the trouble.

Q. Did you think other persons were going to commit violence, who then were in the bus station?

A. Yes, I thought violence was going to occur.

Q. By other people. Is that correct?

A. That's right.

Q. So you removed them to prevent other people from committing violence against them?

A. They were the cause of the disturbance and turmoil.

Q. You removed them to prevent violence being committed against them? Isn't that correct?

A. That is correct.

Q. You heard Mr. Morris, Mr. Zimmer, Father Breeden, Father Jones and Father Pierson all say the station was absolutely quiet. Are you saying their testimony was a lie?

Mr. Watkins: We object to that.

[fol. 587] Mr. Rachlin: I have a right. This man—

The Court: Just quiet down a minute, Mr. Rachlin. It is incompetent for one witness to comment on the falseness or the truthfulness of another witness.

Mr. Rachlin: That is all.

(Witness excused)

David A. Nichols, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Stennett:

Q. State your name, please.

A. David Allison Nichols.

Q. Where do you live?

A. 319 Windsor Drive, Jackson, Mississippi.

Q. Are you a native of Jackson?

A. I was born in Clay County and moved to Chickasaw when I was approximately six years old. There I lived until I was eighteen. I spent three years in the service in Armored Amphibious Division in the Pacific. I came home and stayed in Chickasaw and Clay County until '49; then I came to Jackson.

Q. By whom are you employed?

A. City of Jackson, Police Department.

[fol. 588] Q. Were you so employed in September of 1961?

A. I was.

Q. What position did you hold with the police department on that date?

A. Patrolman.

Q. What position do you hold today?

A. Patrolman.

Q. How long have you been associated with the Jackson Police Department?

A. Be five years next month.

Q. Five years, you say?

A. Five years this coming June.

Q. Mr. Nichols, was anything unusual about the summer and fall of 1961 to the Jackson Police Department?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule.

A. Very unusual.

Q. What was unusual about it?

Mr. Rachlin: Objection.

The Court: Overrule.

A. We had had the Freedom Riders in Alabama causing bloodshed, property damage, and then they came to the State of Mississippi where we had had quite a few arrests [fol. 589] of the Freedom Riders in the City of Jackson.

Q. Do you recall when these four plaintiffs came to the City of Jackson and, particularly, the Trailways bus station?

A. They were in a group of 15 that came, in September.

Q. You recognize these four plaintiffs here today as being in that group?

A. I recognize the four.

Q. Tell us whether or not, Mr. Nichols, you had any advance notice of their coming to Jackson.

Mr. Rachlin: Your Honor, his knowledge is not important, his personal knowledge.

The Court: Overrule the objection.

A. Newspapers, radio, television, had all been carrying the publicity of the priests coming to Jackson.

Q. Had that publicity been disseminated generally to the people over the city?

A. It had.

Mr. Rachlin: Your Honor, Mr. Stennett shouldn't testify for the witness. That clearly was a leading qaestion, putting words in the witness' mouth.

The Court: Well, I will overrule the objection now because the question has been answered. It probably was leading, so I sustain as to leading the witness.

[fol. 590] Q. Did you know how the people of the City of Jackson reacted to this proposed visit?

A. There was very disturbed about it—

Mr. Rachlin: Objection, Your Honor, unless he shows he knows.

The Court: Overrule the objection, if he knows.

A. The people of Jackson were very disturbed about this trip they were making.

Q. Disturbed?

A. They was disturbed.

Q. Were you at the Trailways bus station on September 13th at the time of the arrest of these plaintiffs?

A. I was.

Q. Please tell the Court and jury what occurred there at that time.

A. Officer Griffith and myself was standing on the back ramp of the station back where the buses come in.

Q. This is Officer Griffith (indicating)?

A. That's Officer Griffith. And we happened to see these three cabs pull into the entrance to where the buses come around the station off Pascagoula Street, and it was a load of ministers unloading. We turned and started walking in the bus station, and they entered the front door of the station approximately the same time we entered the rear [fol. 591] door of the station, and we met them just about where the lunch counter, where you go into the lunch room. We asked them to move on. They refused. We asked them again to move on—I did myself. They refused again. And at this time they said they was interstate travelers and wanted to get something to eat. I asked them to move on again and they refused. I asked them did they understand my orders, and they said they did. I asked was they going to obey them, and they said they weren't. At that time Officer Griffith placed them under arrest.

Q. Why did you tell them to move on?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

A. Well, it was a custom of ours in the City of Jackson to ask any crowd of this type, which the Freedom Riders had been a crowd of this type, to move on and disburse before making any arrest.

Mr. Rachlin: I object and ask the statement be stricken from the record.

The Court: Overrule the motion.

Q. Officer, were these people the only ones in the bus station, or were there others in the bus station?

[fol. 592] A. At the time they entered the bus station, oh, there was 10 or 15, maybe 20 people in there. Coming in behind them was quite a sizeable group, maybe 25 or 30 people, came in behind them from the street.

Q. What was the situation when the other people came in behind them?

A. Well, after we got them stopped, their going to the lunch counter, part of 'em had come back out of the lunch room, people in there was mumbling in a very ugly mood and moving about and talking.

Q. Tell the Court and the jury whether or not you tried to avoid arresting these plaintiffs in this group.

Mr. Rachlin: Objection to the question.

The Court: Overrule the objection.

A. We did. We asked them to move for the third time, and they refused each time.

Q. Why did you arrest them?

Mr. Rachlin: Objection.

The Court: Overrule.

A. They had refused our orders to move on and disburse.

Mr. Rachlin: This is a self-serving statement, and I think it objectionable.

The Court: Overrule.

[fol. 593] Q. What, in your opinion, would have occurred if you had not arrested them?

Mr. Rachlin: This is self-serving, improper— All this witness can do is to testify what he himself did. I therefore ask he not be allowed to answer the question.

The Court: Overrule the objection.

A. From the situation in the bus station, the people in the mood they was in, there would have been violence, in my opinion.

Q. Is that why you arrested them?

A. That is why, that and disobeying the orders to move on.

Q. Tell this Court and jury whether the color of their skin of these people you placed under arrest had anything to do with the arrest?

A. No.

Q. Tell the Court and jury whether or not the place of the arrest had anything to do with the arrests?

A. No.

Q. What would you have done under similar circumstances at any other particular place?

Mr. Rachlin: Your Honor, this is hypothetical and unimportant.

The Court: Overrule the objection.

[fol. 594] A. Under the same circumstances, they refused my orders, I would have made the arrest.

Q. Were members of both races arrested in the same location for the same reason?

A. They were.

Mr. Rachlin: Object, and I ask the question and answer be stricken.

The Court: Overrule the objection.

Q. Tell us whether or not the race of those arrested had anything to do with the arrests?

A. It did not.

Q. Officer, I would like for you to tell the Court and jury whether or not these arrests were discussed with the defendant, Judge Spencer, before they were made.

Mr. Rachlin: Objection.

The Court: Overrule.

A. They were not.

Q. Te*llus* whether or not the defendant, Judge James L. Spencer, had anything to do with the arrests?

A. Not to my knowledge, he did not.

Q. Was he present in the bus station that morning?

A. He was not.

Q. Tell the Court and jury whether these arrests were [fol. 595] discussed with Judge Spencer at any time before they came to trial.

Mr. Rachlin: This is incompetent testimony and self-serving; it is irrelevant and immaterial and incompetent.

The Court: Overrule.

A. Not that I know of.

Q. You didn't discuss it with him?

A. No, sir.

Q. Did any one in your presence?

A. No, sir.

Q. Officer, did you testify in the municipal court?

A. No, sir.

Q. Did you testify or were you called for a witness in the county court?

A. I testified in county court.

Mr. Stennett: I believe that is all.

Cross examination.

By Mr. Rachlin:

Q. You said you testified in the county court?

A. I did.

Q. You were present from the very first moment when you saw them get out of the taxicab and you were standing [fol. 596] in the back of the station until they were put in the paddy wagon?

A. I was.

Q. You saw the entire incident? Is that correct?

A. Most of it.

Q. Chief Ray—Now Captain Ray—only came later, didn't he?

A. He came after I made a phone call to headquarters for transportation; I talked to Chief Pierce, and Chief Pierce told me Captain Ray was on his way down.

Q. He was already on his way down?

A. He told me he was on his way down. I don't know whether he left at that time when I made the call or whether he had already left headquarters coming down, or when he left, but Chief Pierce told me that Captain Ray was on his way down. He could have been walking out of the office at that time.

Q. Well, you understood him to mean that Captain Ray was already on his way down?

A. I understood him to mean Captain Ray would be there in a few minutes.

Q. Now, you were standing on the back ramp, weren't you?

A. I was.

Q. And as soon as you saw them, you and Officer Griffith went into the station? Is that right?

[fol. 597] A. We turned around and walked up the ramp and into the station.

Q. Now, as they got out of the cab, did you see anything unusual in the area about them?

A. I saw the priests.

Q. Did you see any crowds around them?

A. No.

Q. Did you see them do anything wrong?

A. No.

Q. In fact, you didn't see them do anything wrong at all the time, from the moment they got out of the taxi cab until they went into the paddy wagon?

A. They was there and the manner they was there caused a breach of the peace, and we placed them under arrest.

Q. What was this manner you were talking about?

A. They had been a publicized group as coming through Jackson. They came, the people was disturbed, in a turmoil, and it caused quite a disturbance when they was there, and we was to remove the cause of the disturbance, and we placed them under arrest.

Q. They didn't say anything to cause a disturbance?

A. I didn't hear it.

Q. Did they say anything to cause a disturbance?

A. I didn't hear.

[fol. 598] Q. Did they threaten you or your associate officer or any person in the station?

A. Not that I saw.

Q. In fact, they behaved in a pretty orderly manner?

A. Until they refused to move on when I asked them to.

Q. Well, up until that moment they were orderly, until you spoke to them? Is that right?

A. They was orderly.

Mr. Rachlin: No further questions.

(Witness excused)

Joseph D. Griffith, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Stennett:

Q. State your full name.
A. Joseph David Griffith.
Q. How old are you?
A. 25.
Q. Where do you live?
A. 710 Primo Avenue, Jackson, Mississippi.
Q. Are you a native of Mississippi?
A. I was born and raised in Simpson County.
[fol. 599] Q. How long have you lived in Jackson?
A. About six years.
Q. By whom are you employed?
A. City of Jackson Police Department.
Q. Tell us whether or not you were so employed in September of 1961?
A. I was.
Q. How long had you been employed by the Jackson Police Department?
A. Approximately three years and three months.
Q. Tell us whether or not there was anything usual or unusual insofar as the Jackson Police Department was concerned during the summer and fall of 1961?

Mr. Rachlin: Your Honor knows my objection. I have made my reasons perfectly clear.
The Court: I overrule the objection, and you may have a standing objection.
Mr. Rachlin: I would prefer to object so the jury will know I dislike each question.
The Court: Yes. All right.

A. The year '61 was very unusual in the City of Jackson.
Q. Why?

Mr. Rachlin: Objection.
[fol. 600] The Court: Overrule.

A. Because of the Freedom Riders that had started in Alabama, in Montgomery, Alabama, and Anniston, Alabama; they had violence, and later on they started coming into Jackson.

Q. Tell us whether or not we had any violence in Jackson as a result of this?

A. No, sir.

Q. Were you or not present at the Trailways bus station on September 13th when these plaintiffs arrived there?

A. I was.

Q. Did you recognize these plaintiffs as being in that group that arrived there that day?

A. Yes, sir.

Q. Tell us whether or not you had any advance notice or whether any advance notice of their coming had been publicized.

Mr. Rachlin: Objection, Your Honor.
The Court: Overrule.

A. We had a prior knowledge of these ministers coming to Jackson through different news media. Some of the news media stated a group of Episcopal ministers had assembled in New Orleans for a meeting and were planning to continue their trip to Jackson, a Freedom Ride to Jackson.

[fol. 601] Mr. Rachlin: Object to that statement. There is nothing in the record about a Freedom Ride to Jackson.
The Court: Overrule the objection.

Q. Was that information disseminated over public radio?

A. Yes, sir.

Q. And in public newspapers?

A. Yes, sir.

Mr. Rachlin: Objection.
The Court: Overrule.

Q. Tell us if you know how the people of the City of Jackson reacted to this proposed visit in the light of the information that had come in.

Mr. Rachlin: Objection.
The Court: Overrule.

A. They resented it very much so.

Mr. Rachlin: I think there is no proper foundation for this question, and the answer, I think, is incompetent under those circumstances.
The Court: Overrule.

Q. Now, were you present at the bus station at the time of the arrest?
A. I was.
[fol. 602] Q. Who was there with you? What officer, if any?
A. Officer Nichols.
Q. Tell us whether or not Officer Ray showed up there.
A. Yes, sir, he showed up later on.

Mr. Rachlin: You were referring to Chief Ray?
Mr. Stennett: Yes.

Q. Tell us whether or not he is your superior officer or of equal rank, or what.
A. He is my superior officer.
Q. Tell the Court and jury just what occurred at the time of the arrest of these people.
A. Officer Nichols and myself were standing on the southeast corner of the Trailways bus terminal, on the ramp, when we noticed three cabs pull into the east driveway at the east side of the Trailways bus terminal, and a group of ministers started unloading. We proceeded down the ramp into the back of the building, which is located on the south side of the Trailways bus terminal. As we walked across the bus terminal, we noticed that the crowd was reacting differently than what they were when we were in there before. We entered the back door approximately the

same time that the ministers entered the front door. We then walked on toward the entrance to the restaurant door. [fol. 603] Two or three of the ministers got through the door to the restaurant, and I believe I said, "Hold it up a minute," and they came back out and were in *agroup* in front of the magazine stand in the west waiting room of the Trailways bus terminal.

We had determined at this point that they were the cause of the trouble, and if we did not remove the cause of the trouble from the Trailways bus terminal, there would be violence and bloodshed.

Mr. Rachlin: Your Honor, I ask the last part of the answer be stricken, from the moment he said he "determined." We are not concerned with what he determined, but with what he did and said and observed.

The Court: Overrule the objection.

A. At this point Officer Nichols ordered this group to move on. I believe Mr. Morris spoke up and said, "We are interstate passengers. We are not violating any law." Officer Nichols ordered them again to move on. Mr. Morris, acting as spokesman for the group, spoke up once more and said, "All we want to do is get something to eat and catch our bus." Officer Nichols asked the group then if they understood his orders. The reply was that they did. He asked them if they would obey his orders. Their reply was [fol. 604] that they did not. I then placed them under arrest. Mr. Morris then spoke up and said, "What charge?" I said, "Breach of the peace." At that point Officer Nichols went to the phone and called police headquarters for help, and while he was on the phone the ministers went into some kind of meditation, I presume, or prayer. Four or five minutes later, Captain Ray came to the bus station, and he once more ordered the group to move out of the bus station, and I believe Mr. Morris spoke up again and said, "All we want to do is get something to eat and catch our bus." Captain Ray said, "If you will follow me, I will be happy to show you safely on your bus." Captain Ray asked them then if they understood his orders, and the reply was that they did, and also asked him if they obeyed his orders, and the reply was that they did not.

And then he placed them under arrest, asked them to follow him. They followed Captain Ray out of the back door. Officer Nichols and myself waited until they got by and stayed between the ministers and the crowd that had assembled in the Trailways bus terminal.

Q. At that point, let me ask you to tell us whether or not any other people entered the bus station at the time or [fol. 605] immediately after the ministers came in.

A. Before the ministers entered the bus station, everything was normal all the morning, the usual run of Trailways bus terminal during that time of the week; 12 or 15 people were in the station. When the ministers entered the front door on the north side of the building, approximately 20 or 25 people followed them in.

Q. In behind them?

A. Yes, sir.

Q. What happened when Captain Ray led them out at the back door?

A. Some of the crowd that had assembled in the bus terminal followed us out.

Q. And that is when you say you and Officer Nichols got between the crowd and the priests?

A. Yes, sir.

Q. Tell us whether or not you tried to avoid arresting these ministers.

Mr. Rachlin: Objection to what he tried to avoid.

The Court: Overrule the objection.

A. Yes, sir, we tried to avoid arresting them by ordering them to move on, to preserve the peace and maintain law and order in the bus terminal.

Q. Then tell us why you did arrest them, for what purpose?

[fol. 606] Mr. Rachlin: Objection, Your Honor. His state of mind is irrelevant and incompetent.

The Court: Overrule the objection.

A. They were placed under arrest because we had determined they were the cause of the trouble in the Trailways bus terminal and if we did not remove the cause of the trouble from the bus terminal that there would be violence and bloodshed.

Q. That is your opinion about what would have happened had you not placed them under arrest and removed them?

Mr. Rachlin: Is Mr. Stennett testifying, Your Honor?

Mr. Stennett: No, sir, I am not testifying.

The Court: Yes, that is leading. Sustain the objection.

Q. Tell us whether or not the color of their skin had anything to do with their arrest.

A. No, sir.

Q. Did the place of arrest have anything to do with their arrest?

A. No, sir.

Q. Tell us what would have happened under the same circumstances connected with a congregation at any other place under the same circumstances.

[fol. 607] Mr. Rachlin: That is irrelevant, incompetent and immaterial, what would have happened some place else.

The Court: Overrule.

Q. What would you have done under similar circumstances?

A. Under similar circumstances, about the same procedure would have been taken to preserve the peace and to maintain law and order in the City of Jackson, because I feel we have a clean city here and I hope and pray that we can keep it this way and not have violence and bloodshed.

Q. Were members of both races arrested in the Trailways bus station that morning for the same reason?

A. Yes, sir.

Q. Tell us whether or not race had anything to *dowith* the arrest.

A. No, sir.

Q. Did you or anyone in your presence discuss these arrests with Judge Spencer before the arrests were made?

Mr. Rachlin: Objection.
The Court: Overrule.

A. No, sir.
Q. Was Judge Spencer in the Trailways bus station that morning?
A. If he was I didn't see him.

Mr. Rachlin: We'll concede that Judge Spencer was not [fol. 608] in the Trailways bus station.
Mr. Stennett: Thank you.

Q. Tell us whether or not Judge Spencer had anything to do with the arrests.
A. Not to my knowledge, no, sir.
Q. Tell us whether or not you discussed the arrests of these plaintiffs with Judge Spencer or had anyone discussed it with him in your presence?
A. No, sir.

Mr. Rachlin: Objection, Your Honor.
The Court: Overrule the objection.

Q. Did you testify in the municipal court?
A. No, sir.
Q. Did you testify in the county court?
A. No, sir.

Mr. Stennett: I believe that is all.

Cross examination.

By Mr. Rachlin:

Q. Officer, I think when counsel was questioning you, you said you would have made these arrests under similar circumstances, either in the station or any place, again if that happened? Is that right?

[fol. 609] A. Yes, sir. Anywhere in the City of Jackson to preserve the peace and maintain law and order, yes, sir.

Q. Now, isn't your judgment on this corrected by the fact that on appeal Judge Moore dismissed the charges against them?

Mr. Watkins: We object to that.

The Court: Yes, sustain the objection.

Mr. Rachlin: Your Honor, they were allowed to go into what this officer would do under other circumstances. I am allowed to show that he would have—I don't withdraw my objection; I just express my frustration. That's all.

The Court: I sustain the objection.

Q. You say you saw people follow them into the station after they entered? Is that right?

A. Yes, sir.

Q. Now, let me ask this question: Officer, were you concerned when you saw people follow them into the station that the plaintiffs and other Episcopal ministers were going to commit any violence against anybody? You didn't think they were going to do anything, did you?

A. Well, it was a threat for—

Q. —I didn't ask you that.

Mr. Watkins: Let him answer.

[fol. 610] Mr. Rachlin: Your Honor, that was not responsive. I asked him whether he thought they were going to commit any violence.

The Court: I will let him answer the question and then he can explain.

Q. Answer the question.

A. It was a threat for the ministers being in the waiting room of the Trailways bus terminal.

Q. I will ask you again: Did you think that Father Breeden here or Mr. Morris or Father Pierson or Father Jones were going to hit anybody?

A. No, sir.

Q. Did you think they were going to shout filthy remarks at anybody?

A. I don't think so, no, sir.

Q. You didn't hear them, did you?

A. No, sir.

Q. In fact, they spoke in a perfectly quiet tone of voice?

A. Yes, sir.

Q. And they were quiet all during the time you saw them? Isn't that true?

A. Yes, sir.

Q. They didn't commit what we call disorderly acts, did they?

[fol. 611] A. No, sir.

Q. When you saw this crowd—that is, when you and the other officer saw this crowd— And you know, of course, there is a dispute about that crowd—but, as you described it, did you and the other officer or either of you go to the entrance where this crowd was coming in and ask them what was their business in the bus station?

A. No, sir.

Q. Did you ask anyone else in the bus station to leave the bus station?

A. No, sir.

Q. Did you hear what anybody in the bus station was mumbling about?

A. No, sir, just to tell they were mumbling, moving around the bus station; could tell they was in an ugly manner from their expressions on their face; if we didn't take some kind of action that violence and bloodshed would occur.

Q. Violence and bloodshed would have occurred because people in the station, you say, didn't like the ministers? Is that the idea?

A. Yes.

Q. The ministers wouldn't have committed the violence, would they?

[fol. 612] A. I don't believe.

Q. The other people in the station would have committed the violence? Isn't that right?

A. Yes, because of the presence of these ministers.

Q. You didn't ask anybody else to leave the station?

A. No, sir.

Q. How many people did you hear say anything out loud about the presence of the ministers in the bus station?

A. I didn't hear anyone say anything out loud.

Q. Did you ask anybody in the bus station what was on his mind?

A. No, sir.

Q. Did you offer to escort these people into the restaurant and let them eat whatever they wanted to and then go on their way in the bus?

A. No, sir.

Mr. Rachlin: No further questions.

(Witness excused)

The Court: We're going to take a recess at this point. Gentlemen, under the instructions I have heretofore given you, separate and be back at one-thirty.

(Noon Recess)

[fol. 613] *After Recess*

Mr. Watkins: We'd like to call Judge Spencer.

James L. Spencer, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

Q. Please state your name.

A. James L. Spencer.

Q. Your age?

A. I'll be 42 in July.

Q. The extent of your education?

A. I graduated from public schools in Jackson, Tennessee. I received a Bachelor of Arts degree from the University of Alabama. I received my law degree, Bachelor of Law degree, at the University of Virginia.

Q. Where do you live?

A. Jackson, Mississippi.

Q. Are you a licensed practicing attorney in Jackson, Mississippi?

A. I am.

Q. Since what date?

A. Spring of 1947, I believe.

Q. What position, if any, did you hold with the City of Jackson on September 13th, 1961?

[fol. 614] A. I was police justice and ex-officio justice of the peace.

Q. Did you know any of the plaintiffs in this case before they were tried in your court?

A. No, sir.

Q. Did you have anything to do with their arrest?

A. No, sir.

Q. Did you have anything to do with the preparation of charges filed against them?

Mr. Rachlin: Your Honor, objection on the ground it calls for a self-serving answer.

The Court: Overrule the objection.

A. No, sir.

Q. What attorneys represented them in your court?

Mr. Rachlin: Objection as being quite irrelevant to this proceeding.

The Court: Overrule.

A. Mr. Carl Rachlin and Jack Young.

Q. Do you know the residences of those attorneys?

Mr. Rachlin: Objection.

The Court: Sustain the objection.

Q. Did any of the plaintiffs or either of their attorneys request a jury trial in your court?

Mr. Rachlin: Objection, Your Honor. What difference [fol. 615] does it make? That is not the issue in this case.
The Court: Overrule the objection.

A. No, sir.
Q. Did any of the plaintiffs in this case, either Reverend Pierson or Mr. Morris, Reverend Breeden or Reverend Jones, testify in your court?
A. No, sir.
Q. Did anything influence your decision other than desire to see justice done?

Mr. Rachlin: That calls for a highest and self-serving answer, and I ask he be instructed not to answer the question.
The Court: Overrule the objection.

A. No, sir.
Q. Are you an Episcopalian?
A. I am.

Mr. Rachlin: —Objection, Your Honor.
The Court: Yes, sustain the objection.

Q. Do you know what evidence was offered in Judge Moore's court?

Mr. Rachlin: It doesn't make any difference whether he knows or he doesn't know.
[fol. 616] The Court: Yes, sustain the objection.

Q. Did you harbor any ill will or malice for any of the plaintiffs?

Mr. Rachlin: Objection, Your Honor. That calls for a conclusion on the part of this witness, and he is not permitted to give a self serving statement of that kind.
The Court: Overrule.

A. No, sir.

Mr. Watkins: That is all.

Mr. Rachlin: Your Honor, in light of Your Honor's rulings this morning to the questions I now would have asked Judge Spencer, may I move that those questions be deemed a part of a cross examination I would have made of Judge Spencer, but in light of Your Honor's ruling, I have no further questions that I could reasonably ask.

The Court: Yes, sir.

Mr. Rachlin: —I ask they therefore be made here and Your Honor would make the same rulings accordingly.

The Court: Yes, sir.

Mr. Rachlin: Then I have no questions to ask.

(Witness excused)

[fol. 617] Mr. Watkins: The defendants rest, Your Honor.

The Court: Anything in rebuttal?

Mr. Rachlin: No, Your Honor, but I have some motions to make.

The Court: Very well. Let the jury step out in the hall.

(Jury was excused)

PLAINTIFF'S MOTION FOR A DIRECTED VERDICT AND OVERRULING THEREOF

Mr. Rachlin: Your Honor, at this time, plaintiffs, pursuant to Rule 50 of the Rules of Federal Procedure, move this Court for a directed verdict; and I would like, as required by the rules, to set forth my reasons for a motion for directed verdict.

The Court: All right.

Mr. Rachlin: Firstly, as a matter of law, the defendants have no defense to this proceeding.

Secondly, under the law of this state and under the laws of the United States generally, officers making arrests act at their own peril, and that applies to these officers, as well as to anybody else. The ruling by Judge Moore, which have been permitted in evidence, disposes of the propriety of the rest. Any evidence that has been offered in that regard is not only irrelevant, but is in derogation of the ruling of Judge Moore. As a matter of fact, it is inter-[fol. 618] esting—

The Court: I don't care to hear argument. I will let you state your ground.

Mr. Rachlin: All right, yes, sir.

Next point: We have proved the elements of false arrest and false imprisonment. That is, we have shown by testimony of every person who has testified in this case, whether it be the plaintiffs themselves or the defendants, that the plaintiffs acted in an aptly proper manner. There is not even the slightest doubt about that.

We have proved that—and this is also undisputed—they were arrested by the defendants. We have proved that, as a result of this arrest, they were confined. We have proved, undisputed, that they were convicted in the court of Judge Spencer. Again, this is undisputed. And the fact that Judge Spencer may have acted without malice is of great inconsequence. This is not—In false arrest cases, malice is of no consequence whatsoever.

And we have proved that upon the appeal, as provided by the provisions and the laws of the State of Mississippi, they were found innocent of the charges, that there was no cause for the arrest.

[fol. 619] In other words, this is the tort we have shown. The motives of the defendants, whatever they may be, are irrelevant. The motives of the plaintiffs are also in the same token irrelevant. People have a right to be present anywhere they desire so long as they behave in a seemly manner. The testimony here is that at all times these plaintiffs behaved in a seemly manner.

Defendants' case, at its best and taking their testimony at this moment, shows that the plaintiffs behaved properly. It also shows that the defendants did not do their duty as a matter of law. Any wrongful acts that may have been committed were committed, not by the plaintiffs, but by other persons, and under the cases as decided as recently as this morning, in the case in this very court, the McComb, Mississippi, injunction case, Douglas against CORE, where the injunction was only this morning set aside, the Court of Appeals of this very circuit made it very clear that unless the parties themselves—

The Court: You need not argue that. I have read that case.

Mr. Rachlin: All right, Your Honor.

In any event, there was also Garner against Louisiana, [fol. 620] and Taylor against Louisiana, which further emphasize this point.

The defendant as a matter of law acted wrongfully. Their own testimony shows this. They made not the slightest effort to ask anybody else to remove from the station. That is, anyone who, according to their testimony, were the source of trouble.

Now, Your Honor on a motion for directed verdict is not even obliged to accept their testimony, and we say as a matter of law—

Mr. Watkins: Your Honor, I submit this is argument.

The Court: Yes, I don't care to hear argument. I would like for you to state your grounds.

Mr. Rachlin: All right, I will be very brief.

We say then, as a matter of law, the defendants failed in their duty, and the testimony is clear.

But in any event, going beyond that into the analysis of the testimony, the testimony, we think, on its face as demonstrated shows the real reason these persons were arrested was because they were a mixed group; that the police sign which everybody acknowledges was in front of that station shows that the duty of these officers was that [fol. 621] they had to arrest any persons of a non-white complexion coming into that station. That was an order, because that sign says "By Order of the Police Department." There is nothing voluntary about that sign at that time, and in fact, it is admitted that that sign is no longer there, for that reason. No matter how peaceful they were, they would have been arrested because they could not have been more peaceful than they were.

With regard to our other cause of action, which I allude to at this moment, as a result of these acts which I have just previously described and that Your Honor has heard over the past several days, it's a matter of law not only was the common law of tort, of false arrest and imprisonment, committed by the defendants, but they have also violated the civil rights laws of the United States, in that they have deprived the plaintiffs of equal protection of the laws as guaranteed by the United States Constitution; that the arrest here, as the evidence showed, was solely on the basis that they were a mixed group; that had they not been a mixed group, they would not have been arrested.

We say then that as a matter of law under Rule 50 of the Rules of Civil Procedure, Your Honor must direct the ver- [fol. 622] dict for the plaintiffs.

Now, on the question of damages—

The Court: Certainly, I could not direct them to return damages, so that is not necessary.

Mr. Rachlin: I was going to say: On the question of amount of damages, we realize that is a matter for the jury to decide. A direction of verdict for the plaintiff as a matter of law is encumbent upon Your Honor at this time, in view of the evidence.

Mr. Watkins: Your Honor, we—

Mr. Rachlin: —I have another entirely different motion to make, not related to this at all.

The Court: You can go ahead and make yours now.

Mr. Rachlin: Make my second motion?

The Court: Yes.

PLAINTIFF'S MOTION TO DISMISS, VACATE AND SET ASIDE THE DEFENSE OF PROBABLE CAUSE AND OVERRULING THEREOF

Mr. Rachlin: My second motion is that the plaintiffs move that you dismiss and vacate and set aside the defense of probable cause, which Your Honor heard at the opening of the trial here.

We say as a matter of law the defense of probable cause is not permissible in a case of false arrest and false imprisonment. This is not a case of malicious prosecution. I very much think the defendants have confused the question [fol. 623] of malicious prosecution with false arrest and false imprisonment. We have cases and memoranda to submit to Your Honor which will show—and, for example, to indicate this, I am reading from Volume 22 of American—

The Court: —You need not bother to read that.

Mr. Rachlin: In any event, the defense of probable cause, even assuming that there was such in this case, is not a defense that can be raised in/a false imprisonment and false arrest case, and the courts have distinguished false imprisonment and false arrest from malicious prosecution cases; and we therefore move that you dismiss, set aside, and vacate the defense of probable cause where at the opening of this trial you permitted the amendment to the Answer to be made. I therefore ask that it be vacated accordingly.

Mr. Watkins: We have two motions to make, Your Honor, if you care to hear them.

The Court: Very well.

DEFENDANT SPENCER'S MOTION TO DIRECT A VERDICT AND ENTER JUDGMENT, ETC. AND OVERRULING THEREOF

Mr. Watkins: Now comes the defendant Spencer and respectfully moves the Court to direct a verdict and enter judgment for said defendant on the ground that the evidence shows without dispute that he was acting as justice [fol. 624] of the peace and judge and had complete jurisdiction over the parties and subject matter, and for that reason alone would be immune from any liability whatever either under the civil rights statutes or false imprisonment.

DEFENDANTS RAY, NICHOLS AND GRIFFITH MOTION TO DIRECT A VERDICT AND ENTER JUDGMENT, ETC. AND OVERRULING THEREOF

Defendants respectfully move on behalf of the defendants Ray, Nichols and Griffith that the Court direct a verdict and a judgment for said defendants on the ground that the evidence shows without dispute that said defendants acted with probable cause in the belief that the plaintiffs were guilty of the offense for which they were arrested.

The Court: Let all the motions be overruled.

I think, Gentlemen, it is a question for the jury under the evidence in this case, and that the Court would be in error to direct a verdict or sustain either one of the motions in this case or to direct a verdict peremptorily for either side.

Upon an application for a peremptory instruction, the evidence is taken most strongly against the movant for a directed verdict and in favor of the opposite side. On the testimony in this case, the jury could return a verdict depending upon its finding for either the plaintiffs or the [fol. 625] defendants. I don't think that a bunch of fellows have a right to just arbitrarily refuse to move if they have been directed to do so by the policeman under circumstances which indicate that if they do not move on and separate, why, then there would be a riot or bloodshed. In this case, I think there is some testimony as such that the jury could draw the inference, if it wanted to, that these plaintiffs, along with others, conspired to come for the sole purpose of having themselves arrested and placed in jail in order to obtain publicity for the cause they were seeking, that they arbitrarily refused to move on or separate when they had been directed to do so by the policeman. If they think, from the evidence in this case, it was likely that a riot would have occurred and somebody would be hurt —the plaintiffs themselves or some outsider who was participating in the mob—even though they were wrongful, yet if a public officer can prevent a riot or a breach of the peace, it is his duty to do so; and that these what might be known as breach of the peace statutes are valid exercise of the police powers of the state.

Now, that, briefly, is the ground upon which I base my ruling.

[fol. 626] I also think—I didn't give my reasons for admitting evidence which was repeatedly objected to, but now in the absence of the jury I can do it.

I think the evidence—and I take judicial knowledge of the serious condition that they had in Montgomery, Alabama, and Anniston, Alabama, just a short time before this, where they actually had bloodshed and the rioting was terrific—when the Freedom Riders arrived here, the police had been alerted, and as a result of their alertness and efforts of the policemen of the City of Jackson, there was no riot here, but nobody could tell in advance what would happen; and if the officers have reason to believe and foresee that there is high tension, when just almost a snap of the finger could set it off, if the officers can prevent that, I think it is their duty to do so.

So you have a situation here where I think all of these facts must be resolved by the jury, and I will therefore overrule all motions.

I will give you thirty minutes to the side to argue the case.

Mr. Rachlin: I want to thank Your Honor out of the presence of the jury for the courteous manner in which [fol. 627] you would indulge me when I sometimes may have, in the course of the trial, become a little overheated.

The Court: I appreciate your thanks, and I admire the skill and the vigor with which you try a lawsuit.

Mr. Rachlin: At the same time, I don't want Your Honor to think that I agree with your rulings in the case.

The Court: I understand that.

(The jury was recalled)

(Argument of counsel)

Court's Instructions to Jury

The Court: Gentlemen of the jury, you have heard all the testimony in the case, and I will now give the instructions of the Court, which will be the law to guide you in reaching a verdict in the case when you apply it to the evidence in this case.

The burden of proof is upon the plaintiff to prove by a preponderance of the evidence that a wrong was done to them by the defendants in the case. If they fail to do that, meet that burden, then your verdict would be for the defendant. If they prove by the preponderance of the evidence and under the law of the case that they have been done a wrong, then your verdict would be for the plaintiffs.

You are the sole judges, Gentlemen, of the weight of the [fol. 628] testimony and of the credibility of all of the witnesses in the case. You are entitled to consider the interest that any witness has in the outcome of the case in weighing his testimony. You are entitled to draw reasonable inferences from the testimony that was delivered on the witness stand and it is your duty to consider all the evidence and then determine what weight you will give to all of the evidence.

You are entitled to consider everything that you have been permitted to hear that has been received in evidence during the progress of the case.

The law of Mississippi is this—and I instruct you that Section 2087.5 of the Mississippi Code of 1942 Recompiled and as amended provides that whoever congregates with others in a public place or in any place of business engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby and who fail or refuse to disburse and move on when ordered so to do by any law enforcement officer of any municipality shall be guilty of a misdemeanor; and if you believe from the preponderance of the evidence in this case that on September 13, 1961, the plaintiffs congregated with others at the Trailways bus station in Jackson, Mis-

[fol. 629] sissippi, under such circumstances that a breach of the peace may have been occasioned thereby, and that the plaintiffs failed or refused to disburse or to move on when ordered so to do by the police officers of the City of Jackson, Mississippi, then it would be your duty to return a verdict for the defendants in the case.

That is, you might say, the crux of the law, but, of course, everything I say to you is a part of the law, and all of the instructions will be taken together; but if a bunch of folks congregate with others engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby, and fail or refuse to disburse when ordered so to do by a law enforcement officer, he is guilty of a misdemeanor, and the officers under those circumstances would have the right to arrest him.

It is not contemplated by that law that any violence would be done to any particular person, but if a bunch of people gather at a public place under such circumstances as then existed that a breach of the peace may occur unless the officers have a right to tell them to move on, and if they refuse to do so, then, of course, they would be guilty of [fol. 630] the crime, and the officers would have the right to arrest them.

So that in this case, you know what all the facts are, and it is for you to determine what the facts are, and you are entitled to consider, as I have permitted to go to you, all the testimony beginning with the rides of the Freedom Riders when they came into Mississippi, and the tenseness, if you believe from the evidence such a situation was tense, then in weighing the act and conduct of the officers, you may take into consideration all those things that have been shown by the testimony; and you are not required to judge their conduct in that same cool, calm manner that you could now as you sit there in the jury box; but in weighing their conduct and weighing the testimony in the case, you place yourselves as if you were the officers under the circumstances with the knowledge those officers had and what you saw with your eyes; and if you believe that the officers had occasion under all the circumstances to believe that unless those plaintiffs and their associates moved on a breach of the peace would occur, then the officers had a right to arrest them; if, on the other hand, there was nothing to cause the officers to believe that a breach of the peace would occur or that the violence of [fol. 631] some type would arise, then the officers would not have the right to arrest them. That is one of the main questions in the case.

Several instructions have been requested by the plaintiffs in the case, some of which I give and some of which I refused because I didn't think they stated the law; but the ones I read to you constitute the law, along with all other instructions that I will give you hereafter and with what I have heretofore said.

Instruction Number 1 requested by the plaintiffs in the case, I give:

THE COURT INSTRUCTS THE JURY FOR THE PLAINTIFFS:

That if you believe from the evidence that the Defendant Spencer illegally caused the conviction of the Plaintiffs, and that as a result the Plaintiffs were illegally deprived of their liberty, the jury shall find a verdict for the Plaintiffs.

That means, Gentlemen, that if you should believe from the evidence in this case that Judge Spencer illegally caused the conviction of the plaintiffs and as a result thereof they were illegally deprived of their liberty, you would find for the plaintiffs. If you believe that Judge [fol. 632] Spencer was acting illegally when he convicted them, and intended to do so, then of course you would find for the plaintiffs as against him, but if he was acting in good faith and simply made an error of judgment, then he wouldn't be liable.

There are many limitations upon the liability of a judge, because every judge makes some mistakes at some time or other in his life, and that is not illegal, even though it is a mistake. So that is true in this case as to Judge Spencer.

Number 2 requested by the plaintiffs, I give:

The Court Charges the Jury for the Plaintiffs:

That if Judge Russell Moore of the Hinds County Court on appeal from the convictions by defendant Spencer sitting ex officio Justice of the Peace and Police Justice of the City of Jackson found the Defendants not guilty of violating Section 2087.5 of the Mississippi Code of 1942 then probable cause for the arrest of Plaintiffs is not a defense and in such an event the jury shall find, if they believe the arrest of the plaintiffs were illegal, actual damages for the Plaintiffs.

On the other hand, if you believe from the evidence in [fol. 633] the case and from all the evidence you have heard that the arrest of the plaintiffs was not illegal but was legal and done in good faith, then you would find for the defendants.

Number 3 requested by the plaintiffs, I give:

The Court Charges the Jury for the Plaintiffs:

That if you believe from the evidence that Defendant Ray, Nichols, and Griffith illegally caused the arrest under Section 2087.5 of the Mississippi Code of 1942 of the Plaintiffs, and as a result of the aforesaid acts the Plaintiffs were illegally deprived of their liberty the jury shall find a verdict for the Plaintiffs against the Defendant.

That instruction means just what it says, that if those defendants illegally caused the arrest of the plaintiffs and deprived them illegally of their liberty, you would find for the plaintiffs. On the *otherhand,* if you believe from all the evidence in this case that they were legally arrested by the defendants, then your verdict would be for the defendants.

Instruction Number 4 requested by the plaintiff, I refuse.

[fol. 634] Instruction Number 6 requested by the plaintiffs, I refuse.

Number 7 requested by the plaintiffs, I refuse.

Number 8 requested by the plaintiffs, I refuse.

Number 5 requested by the plaintiffs, I refuse.

Number 9, I refuse.

I further instruct you that if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Griffith and Nichols said defendants had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested, it is your duty to return a verdict for the defendants.

I further instruct you that if you find from a preponderance of the evidence in the case that at the time of the conviction of the plaintiffs by the defendant James L. Spencer the said defendant Spencer had probable cause to believe the plaintiffs were guilty of the offense for which they were convicted, it will be your duty to find a verdict for the defendant Spencer.

I further instruct you if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Nichols and Griffith [fol. 635] said defendants had probable cause to believe and did believe in good faith that the plaintiffs were guilty of the offense for which they were arrested, then it is your duty to return a verdict for the defendants regardless of the outcome of the plaintiffs' criminal cases on appeal to the Hinds County Court.

I further instruct you if you find from a preponderance of the evidence that at the time of the conviction by the defendant Judge Spencer that the defendant Spencer believed and had probable cause to believe that the plaintiffs were guilty of the offense for which they were convicted, it is your sworn duty to return a verdict for the defendants regardless of the outcome of the plaintiffs' criminal case to the County Court of Hinds County.

I instruct you further the issue in this case is not whether the plaintiffs were guilty or innocent of the offense on which they were arrested and convicted, and the fact the

Hinds County Court dismissed the charges on appeal does not in itself entitle plaintiffs to recover in this action from the defendants or any of them, but that it is only probable presumption that conviction was not justified by the evidence.

With reference to the plaintiffs' claims under the Federal [fol. 636] Civil Rights statutes: That is one of the claims asserted by the plaintiffs in their complaint, that there was a violation of their civil rights. So I instruct you with reference to the plaintiff's claims under the Federal Civil Rights statutes that there is no liability on the part of the defendants unless the jury believes from a preponderance of the evidence in this case that the defendants intentionally deprived the plaintiffs of their civil rights.

I further instruct you with reference to the Federal Civil Rights statutes that an unsuccessful or unfounded state court action is not sufficient to create liability on the part of the defendants, and that it is the duty of the jury to find for the defendants unless the jury find from a preponderance of the evidence in the case that the action of the defendants constituted a discrimination between persons or classes of persons.

Gentlemen, if you find for the defendants, then that ends the lawsuit; but if you find for the plaintiffs, then it becomes necessary for you to determine the amount of the damages that you would award the plaintiffs in the case against the defendants; and I instruct you that if you find for the plaintiffs that you shall find such amount as will compensate them for the wrongs. In considering that, you [fol. 637] may take into consideration actual disbursement that occurs or expenses by plaintiffs for all these trips to Jackson from their homes; the expense of their stay in Jackson for the purpose of criminal hearings and trial; the expenses of the return to the homes of the plaintiffs from Jackson; and also such a reasonable amount as would compensate plaintiffs, in the opinion of the jury, for the illegal detention of the plaintiffs in the county jail; and, lastly, such a reasonable amount as will, in the opinion of the jury, compensate the plaintiffs for any mental anguish and suffering and injury to character, if any, they may have suffered as a result of illegal arrest, conviction, and detention of the plaintiffs.

That is what you take into consideration in determining the amount of damages if you find for the plaintiffs.

If you find for the defendants, then, of course, you do not have to consider damages one way or the other.

It takes all twelve of you to arrive at a verdict, and it must be concurred in by all twelve of you. Nine of you cannot agree on a verdict as you do in the state court. It takes all twelve.

I am giving you two forms of verdicts, and you will use the one that follows your findings of fact under the law I [fol. 638] have given you. If you find for the plaintiffs, you use this form:

"We the jury find for the plaintiffs and assess their damages as follows:

"For Robert L. Pierson in the sum of ....
"For John B. Morris, in the sum of ....
"For James P. Breeden in the sum of ....
"For James G. Jones, Jr. in the sum of ...."

And you would fill in those blanks, and all of you sign that verdict and destroy the other one.

If you find for the defendants, then you would use this form:

"We the jury find for the defendants J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer," and all of you sign that verdict and destroy the other form.

Very well, Mr. Marshal, carry the jury to the jury room.

(The Jury Retired)

The Court: Any exceptions by the plaintiff to the charge of the Court?

Mr. Rachlin: Yes, sir. First, I would like to except from your denial of the specific charges we submitted to you, and I ask for the sake of the record that they be at least [fol. 639] included in the record, even though the jury doesn't have them before them.

The Court: Yes, sir, they become a part of the record.

Mr. Rachlin: Secondly, I would like to except specifically to the comments made by the Court as part of the charge of the Court that related to the three charges that were read by you that were granted us.

Thirdly, I think your charge was improper in that it did not let the jury give adequate consideration to the possibility of a verdict for the plaintiffs. I think a reading of the charge would indicate that all the possibilities were concerned with verdicts for the defendants.

Fourthly, I think there was an inconsistency in your charge with regard to the charge that concerned itself with —which we submitted which related to Judge Moore's decision, and the comment in that charge we submitted about lack of probable cause. Your charge later about probable cause was completely inconsistent each with the other.

I would like then to enter a general objection to your charge because I am afraid my memory, being human, fails me, and there are certain specific things I do not at this [fol. 640] moment recall; but those are my exceptions, and I thank Your Honor.

The Court: Let the exceptions be noted, and the Court will adhere to its ruling.

While it's not necessary to comment, I don't think there is any inconsistency in the charge given for you and the charge given for the defendants, with reference to the lack of probable cause. I at least endeavored to avoid any conflict.

So let the exceptions be noted, and I adhere to the ruling.

Any exceptions by the defendant?

Mr. Watkins: To one charge requested by the defendants, it being their second instruction, to this effect: If

Judge Russell Moore in Hinds County Court, on appeal from Judge Spencer sitting ex officio Justice of the Peace and police justice of the City, found the defendants not guilty of violation of Section 2087.5 of the Mississippi Code of 1942, then probable cause for the arrest of the plaintiffs was not a defense, and in such event the jury shall find, if they believe the arrest of the plaintiffs was illegal, actual damages for the plaintiff.

I object to it for the reason that although the word [fol. 641] "illegal" is thrown in at the last of the instruction, I interpret that instruction to tell the jury that just because Judge Russell Moore may have found them not guilty on appeal, that the defense of probable cause did not exist; whereas, I don't think his findings on appeal have anything to do with whether the officers had or did not have probable cause to make the arrest.

The Court: Let the exceptions be noted, and the Court will adhere to its ruling.

Mr. Rachlin: May I at this time renew my motion for a directed verdict and for dismissal of the defense of probable cause?

The Court: Yes, and I will adhere to my ruling I made and deny the motion, and adhere to the ruling I made on Mr. Watkins' request for a directed verdict on behalf of the defendants.

Let the case now be submitted to the jury.

(The jury returned with a verdict)

RENEWAL OF MOTION FOR A DIRECTED VERDICT, TO SET ASIDE AND VACATE THE VERDICT OF THE JURY AND FOR A NEW TRIAL AND OVERRULING THEREOF

Mr. Rachlin: At this time I would like to renew our motion for a directed verdict, as provided in the Rules, and also move to set aside and vacate the verdict of the jury [fol. 642] on the grounds that it is against the evidence, contrary to the weight of the evidence, and for all the reasons as set forth in the Federal Rules of Procedure and all applicable rules thereto; and at the same time I make a motion for a new trial, and also move to set aside the verdict of the jury for the reasons that I moved during the trial, for which I then asked for a mistrial, on the grounds that a substantial amount of evidence which was prejudicial was improperly admitted in evidence in violation of the rules of evidence and in violation of the rules under which this court operates.

The Court: You desire any time in which to brief that, or do you want a ruling on it now?

Mr. Rachlin: Just give a ruling on it right now.

The Court: Well, I have given a great deal of thought to the case, and I think my rulings were all correct. Unless I found out where I committed an error, then I would certainly adhere to the rulings I made.

Mr. Watkins, do you want to brief it, or would you rather have a ruling now?

Mr. Watkins: No, sir, I would like to have a ruling now.

The Court: Very well. I will rule on the motion now.

[fol. 643] As I said a moment ago, I have given the case careful thought and considerable research on the questions involved in the case, and I am of the opinion that all the rulings I made were correct and that no error was committed, so I, therefore, overrule each motion. That is to say, I will overrule the motion for a judgment notwithstanding the verdict, and I will overrule the motion for a new trial.

So an order may be drawn first for a judgment in accord with the verdict of the jury, for the defendants, and then an order may be drawn overruling the motion for a new trial and overruling the motion for a judgment or directed verdict for the plaintiffs wherein he requested that the judgment be vacated and set aside and to find a verdict for the plaintiffs notwithstanding the verdict. So each motion is overruled.

[fol. 644] Court Reporter's Certificate (omitted in printing).

[fol. 645] IN UNITED STATES DISTRICT COURT

JURY VERDICT—Filed May 16, 1963

We, the Jury, Find for the Defendants, J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer.

1. William V. Murtugh
2. Frederick C. Fletcher
3. Lynwood L. Denson
4. Roy C. Davis
5. Neville Garner
6. Clifton E. Rhodes
7. Ray J. McEwen
8. James E. Shoemaker
9. Elmer Boyd
10. J. F. Edwards
11. Ben H. Pace
12. Arthur K. Strong

IN UNITED STATES DISTRICT COURT

JUDGMENT—May 17, 1963

This Action came on for trial on its merits, the plaintiffs and the defendants having announced ready for trial after issue joined, and a jury, composed of Ben H. Pace and eleven others, having been impaneled as provided by law [fol. 646] and accepted by the plaintiffs and the defendants, and the Court and jury having heard all of the evidence and the arguments of counsel, and the jury having received the instructions of the Court, retired to consider their verdict and presently returned into open Court the following verdict:

> "We, the jury, find for the defendants, J. L. Ray, J. D. Griffith, D. A. Nichols, and James L. Spencer."

and which verdict was duly received and entered as the verdict of the jury in said action.

It is, therefore, ordered and adjudged that the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., and each of them, do have and recover nothing of and from the defendants, J. L. Ray, J. D. Griffith, D. A. Nichols, and James L. Spencer, or either of them, and that said defendants go hence without delay, and all Court costs herein incurred be and the same are hereby taxed against the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., for all of which let execution issue, as provided by law.

Ordered and Adjudged, this 17th day of May, 1963.

S. C. Mize, United States District Judge.

[fol. 647] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR NEW TRIAL—May 25, 1963

This cause came on for trial on its merits, the plaintiffs and the defendants having announced ready for trial after issue joined, and a jury, composed of Ben H. Pace and eleven others, having been impaneled as provided by law and accepted by the plaintiffs and the defendants, and the Court and jury having heard all of the evidence and the arguments of counsel, and the jury having received the instructions of the Court, retired to consider their verdict and presently returned into open Court the following verdict:

> "We the jury, find for the defendants, J. L. Ray, J. D. Griffith, D. A. Nichols, and James L. Spencer."

and which verdict was duly received and entered as the verdict of the jury in said action.

The plaintiffs having then and there made a motion for a new trial, stating the following reason therefor: verdict was against the weight of the evidence, that the instructions given the jury was given the jury in a manner which was prejudicial to the plaintiffs, and that the entire trial was conducted in such a manner that it was prejudicial to the plaintiffs,

It Is Therefore Ordered and Adjudged that the motion of the plaintiffs for a new trial be and the same is hereby denied.

[fol. 648] Ordered and Adjudged, this 25th day of May, 1963.

S. C. Mize, United States District Judge.

In United States District Court

Notice of Appeal—Filed June 10, 1963

Notice is hereby given that Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Final Judgment entered in this action on May 21, 1963.

Dated: June 10, 1963.

L. H. Rosenthal, and Carl Rachlin, Attorneys for Appellants, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr.

L. H. Rosenthal, 242½ East Capitol Street, Jackson, Mississippi; Carl Rachlin, 280 Broadway, New York 7, New York.

[fol. 649] Designation of Record on Appeal—Filed June 17, 1963 (omitted in printing).

[fol. 650] Order Extending Time for Filing Record—July 3, 1963 (omitted in printing).

Order Extending Time for Filing Record—September 7, 1963 (omitted in printing).

[fol. 652] Certificate of Service of Record (omitted in printing).

[fol. 653]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21325

ROBERT L. PIERSON, ET AL., Appellants,

versus

J. L. RAY, ET AL., Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi.

ORDER DENYING MOTION TO DISMISS—Filed March 25, 1964

Before HUTCHESON, JONES and WISDOM, Circuit Judges.

BY THE COURT:—

On Consideration of the motion of appellees to docket and dismiss the appeal in the above entitled and numbered cause, and of the affidavit of appellants in opposition, It Is Ordered that said motion to dismiss be, and the same is hereby Denied.

[fol. 654] Minute Entry of Argument and Submission—November 17, 1964 (omitted in printing).

[fol. 655]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21325

ROBERT L. PIERSON, ET AL., Appellants,

versus

J. L. RAY, ET AL., Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

OPINION—October 25, 1965

Before JONES and BELL, Circuit Judges, and HUNTER, District Judge.

JONES, Circuit Judge: The appellants brought an action against the appellees alleging a common-law tort claim for false imprisonment and a statutory[1] claim for damages for a deprivation of civil rights. The appellants were clergy-[fol. 656] men. One of them is a Negro. The appellees Ray, Griffith and Nichols were police officers of the City of Jackson, Mississippi. The appellee Spencer was the Police Justice and Ex-Officio Justice of the Peace, Hinds County, Mississippi.

---

[1] Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C.A. § 1983.

Fifteen clergymen in clerical attire, including the appellants, were participants in a so-called prayer pilgrimage. Most of the twenty-six who were accepted for the pilgrimage resided in Northern states. The pilgrimage was to start at New Orleans and go to Dearborn, Michigan. A bus was chartered from New Orleans to Jackson, but not beyond. At Jackson the fifteen clergymen went by taxicab to the Continental Bus Terminal. They had bus tickets for transportation to Chattanooga, Tennessee. They arrived at the bus terminal in Jackson about 11:20 o'clock in the forenoon of September 13, 1961. The Chattanooga bus was scheduled to depart shortly after noon.

The prayer pilgrimage had been well publicized in advance. The appellees Griffith and Nichols had been sent to the bus station. Upon or soon after their arrival the fifteen clergymen started toward the coffee shop. They were stopped by the two officers and remained in the passageway leading to the coffee shop. The officers directed or ordered them to "move on." The clergy stayed at the place where they were halted. One of the officers telephoned the police station and soon after the appellee Ray arrived. He was then a captain of police. At the time of the trial of the cause in the district court he was deputy chief of police. When the group arrived there were fifteen to twenty people in the [fol. 657] bus station. Twenty-five to thirty people, all of whom were white, followed them in. There was testimony that the people in the station were "mumbling in a very ugly mood," that they were "disturbed," that they were "in a turmoil," and that quite a disturbance was caused. The group of prayer pilgrims were completely orderly. Captain Ray told the clergy to "move along" and upon their failure and refusal to do so, they were arrested and taken to jail. An affidavit was filed by Captain Ray charging them with disorderly conduct under a Mississippi statute.[2] The appellants were tried on September 15, 1961, before the appellee, Judge Spencer, and found guilty. Each of the appellants was sentenced to four months in jail and fined two hundred dollars. Appellants Breeden, Morris, and Pierson were released on bond on September 19, and the appellant Jones was released on bond on September 29, 1965. Bond was available to all the appellants and it was by their choice that they remained in jail rather than being sooner released on bond. The appellants took an appeal to the County Court [fol. 658] of the First Judicial Court of Hinds County, where the appeal was by way of a de novo trial. The case of the appellant Jones was first heard by the County Judge, who found him not guilty. The prosecution then moved that the charges against the other appellants be nolle prosequied, and the motion was granted. The appellants brought this action, each claiming $11,001 damages. The cause was tried before a jury which returned a verdict for the appellees. A judgment was entered on the verdict from which this appeal has been taken.

---

[2] 1. Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in . . . . any hotel, motel store, restaurant, lunch counter, cafeteria, sandwich shop, ... or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, ... shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars ($200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; . . . . Miss. Code 1942 Recompiled § 2087.5.

In a pre-trial deposition of the appellee Spencer, he was asked whether a citizen has a right to disobey an unreasonable or improper order of a police officer, as in a case in which it was clear that the order of the policeman to move on was improper. He was asked to answer the question as a judge. His answer was that he thought the citizen should obey the officer and later seek redress. The appellants were not permitted to question the appellee Spencer as to this opinion when he was called as an adverse witness at the trial. The appellants contend that the ruling was erroneous. The refusal of the district court to permit the question was not error. Both at the taking of the deposition and at the trial the questions were propounded to the witness in his capacity as a judge. Whether or not a judicial opinion is erroneous is not a question to be resolved by a jury. A judge's function is to decide cases, but not to answer academic or hypothetical questions.

The appellee Spencer filed a motion to dismiss the complaint as to him on the ground that his actions were [fol. 659] judicial and he was immune from any civil liability. The motion was deferred for decision until the trial of the case on the merits. No ruling on the motion was made. The judgment for the appellants made the question unimportant, but we think it is appropriate to say that the motion should have been granted. By the leading case of *Bradley* v. *Fisher*, 13 Wall. 335, 20 L. Ed. 646, the immunity was established of judges of courts of superior or general jurisdiction from liability for damages growing out of the performance of their judicial duties. The doctrine has been extended to the judges of all courts. *Barr* v. *Matteo*, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434; *Yaselli* v. *Goff*, 2nd Cir. 1926, 12 F.2d 396, aff. 275 U.S. 503, 48 S. Ct. 155, 72 L. Ed. 395. The rule applies to city magistrates and municipal judges. *Cuiksa* v. *City of Mansfield*, 6th Cir. 1957, 250 F. 2d 700, cert. den. 356 U.S. 937, 78 S. Ct. 779, 2 L. Ed. 2d 813; *Reilly* v. *United*

States Fidelity & Guaranty Co., 9th Cir. 1926, 15 F. 2d 314; 35 C.J.S. 707, False Imprisonment § 44. Such is the law in Mississippi. *Bell* v. *McKinney,* 63 Miss. 187. The judicial immunity applies in civil rights actions as well as at common law. *Norton* v. *McShane,* 5th Cir. 1964, 332 F.2d 855, cert. den. 380 U.S. 981, ... S. Ct. ...., 14 L. Ed. 2d 274. If a judicial officer acts in the clear absence of all jurisdiction and authority he incurs liability for a false imprisonment caused by him. 35 C.J.S. 707, False Imprisonment § 44. The Mississippi statute, Sec. 2087.5, on its face, was sufficient to justify the action taken by Judge Spencer. The statute had not then been held invalid. It was subsequently upheld by the Supreme Court of Mississippi in *Thomas* v. *State,* 160 So. 2d 657, *Farmer* v. *State,* 161 So. 2d 159, and *Knight* v. *State,* 161 So. 2d [fol. 660] 521. We think it cannot be said that there was a clear absence of jurisdiction in the appellee Spencer at the time action was taken by him although, since this cause was argued before us, the statute was held invalid as applied to circumstances such as those in this case. *Thomas* v. *Mississippi,* 380 U.S. 524, 85 S. Ct. 1327, 14 L. Ed. 2d 265. See *Boynton* v. *Virginia,* 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed. 2d 206. A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess. We think it was proper to defer a ruling on the motion of the appellant Spencer but it should have been granted when the evidence was in.

The doctrine of immunity which has long prevailed with respect to judicial officers, has been extended to other officers of government whose duties are related to the judicial process. *Barr* v. *Matteo,* 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434, *Norton* v. *McShane,* 5th Cir. 1964, 332 F.2d 855, cert. den. 380 U.S. 981, ... S. Ct. ...., 14 L. Ed. 2d 274;[8] *Gregoire* v. *Biddle,* 2nd Cir. 1949, 177 F.2d

---

[8] In Norton v. McShane a claim was asserted against Federal marshals. For Erie-Tompkins purposes it was a Mississippi case.

579, cert. den. 339 U.S. 949, 70 S. Ct. 803, 94 L. Ed. 1363. In this cause, as in *Norton* v. *McShane, supra,* the doctrine of official immunity protects the police officers from common-law false-imprisonment liability. The rule may be otherwise where a claim is asserted under a Civil Rights Act. In *Norton* v. *McShane,*[4] *supra,* it was said:

> "While it is clear that the common-law immunity afforded legislative and judicial officers applies in suits [fol. 661] under the Civil Rights Acts, there remains much uncertainty as to the extent to which immunity for subordinate executive officials applies, if it applies at all." 332 F.2d 855, 860-861.

The uncertainty then existing still prevails. 15 Am. Jur. 2d 452 et seq., Civil Rights § 67. It might seem to be an anomaly of the law that in the case of a Federal police officer acting in Mississippi, an extremely aggravated wrong must remain unredressed because of public policy, as was held in *Norton* v. *McShane, supra;* while in the case before us, municipal police officers, acting in Mississippi, may be required to answer in damages for acting in good faith under a state statute which they were entitled to presume to be valid. Yet such appears to be the law which controls our decision on this issue in this appeal.

Not the
situation
no claim
they acted
in good
faith

By dictum in *Hoffman* v. *Halden,* 9th Cir. 1959, 268 F.2d 280, it was indicated that by the Civil Rights Act liability was imposed on state officers for acts within as well as without the scope of their authority if done under color of law. In *Monroe* v. *Pape,* 365 U.S. 167, 81 S.Ct. 473, 5 L. Ed. 2d 492, it was held that under 42 U.S.C.A. § 1983 a cause of action may be asserted against a state police officer acting under color of state law for deprivation of a Fourteenth Amendment Constitutional right whether or not done wilfully. See *Cohen* v. *Norris*, 9th Cir. 1962, 300 F.2d 24. *Cf. Davis* v. *Turner*, 5th Cir. 1952, 197 F.2d 847. Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses. [fol. 662] *Monroe* v. *Pape* did not expressly rule upon the question of immunity but the result necessarily implies rejection of such a defense as a general proposition. *Cohen* v. *Norris, supra.* The defense of immunity is not available to the police officer appellees in this cause.

---

[4] It may be noted that Norton v. McShane was decided more than a year after Nesmith v. Alford. The writer of the Norton opinion was one of the judges of the panel that decided Nesmith.

While one of the appellants was on the stand as a witness for himself and the other appellants, he was shown a copy of the Daily Worker, setting out nine demands of the Communist party with respect to racial discrimination, and asked if he agreed with the demands. The witness was required to answer over objection. His answer was, as to all but one, that he agreed and as to it he was undecided. The appellants then moved for a mistrial. The motion was denied. The interrogation of the witness as to his beliefs regarding racial segregation and the like seem wholly irrelevant to any of the issues of the case. It might be urged with plausibility that the error in permitting the questions to be asked and requiring them to be answered was not prejudicial. We cannot agree. The permitting of the use of the Communist party organ, the Daily Worker, as the source of the inquiries could not be other than prejudicial error.

The trial court permitted one of the appellants and their witnesses to be questioned regarding racial strife in the City of Jackson occurring in connection with the visitation of Freedom Riders, so called, some time prior to the episode from which this action arose. Appropriate objections were made and overruled. No connection was shown between the Freedom Riders and the Prayer Pilgrims, and the appellants denied any connection. It was not shown that [fol. 663] the earlier incidents were sufficiently close in point of time to have any relation to the situation with which we are dealing. It was error not to have sustained the objections.

The appellants here complain of a charge[5] given by the district court with respect to the Mississippi statute. No specific objection was made to the charge nor grounds of objection assigned.[6] It may be observed, in connection with the instruction, that at the time of the trial the

---

[5] The law of Mississippi is this—and I instruct you that Section 2087.5 of the Mississippi Code of 1942 Recompiled and as amended provides that whoever congregates with others in a public place or in any place of business engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby and who fail or refuse to disburse and move on when ordered so to do by any law enforcement officer of any municipality shall be guilty of a misdemeanor; and if you believe from the preponderance of the evidence in this case that on September 13, 1961, the plaintiffs congregated with others at the Trailways bus station in Jackson, Mississippi, under such circumstances that a breach of the peace may have been occasioned thereby, and that the plaintiffs failed or refused to disburse or to move on when ordered so to do by the police officers of the City of Jackson, Mississippi, then it would be your duty to return a verdict for the defendants in the case.

That is, you might say, the crux of the law, but, of course, everything I say to you is a part of the law, and all of the instructions will be taken together; but if a bunch of folks congregate with others engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby, and fail or refuse to disburse when ordered so to do by a law enforcement officer, he is guilty of a misdemeanor, and the officers under those circumstances would have the right to arrest him.

It is not contemplated by that law that any violence would be done to any particular person, but if a bunch of people gather at a public place under such circumstances as then existed that a breach of the peace may occur unless the officers have a right to tell them to move on, and if they refuse to do so, then, of course, they would be guilty of the crime, and the officers would have the right to arrest them.

[6] A general objection, which counsel attempted to interpose because of his fear that his memory had failed him, is unavailing. Fed. Rules Civ. Proc. 51, 28 U.S.C.A.

[fol. 664] Mississippi statute, Section 2087.5, had not been held invalid. The instruction, in the form given, would not now be proper.

The appellants complain of the trial court's instruction[7] on probable cause, and an objection to it was made and preserved. If the trial court had been correct in its assumption that Section 2087.5 was a valid statute defining a misdemeanor, then the instruction would have been proper. A police officer is permitted to arrest, without a warrant, for misdemeanors committed in his presence. Is he to be required in order to be free from liability for damages, to have his action vindicated by a judgment of conviction, an affirmance on appeal, and a Supreme Court determination of the validity of the statute under which he has acted? The authorities are not uniform as to whether a public officer can be held civilly liable for acting under the authority of a statute subsequently held invalid. *Miller* v. *Stinnett,* 10th Cir. 1958, 257 F.2d 910. The rule followed in Mississippi, which may be the minority rule but which is controlling here, is that a public officer is not charged with the duty of determining at his peril whether a statute is valid when he is acting under it. *Golden* v. *Thompson,* 194 Miss. 241, 11 So. 2d 206. Thus the challenged instruction was not improper when given although if it should be requested now, since the statute has been declared invalid, it would be couched in different terms; although the conduct of the appellees would [fol. 665] be tested by the situation existing at the time of their action.

The appellant Morris was the executive director of the society which organized and supervised the prayer pilgrimage. The court admitted in evidence, over timely objections, his letters and memoranda used in organizing and planning the pilgrimage. From these exhibits and from the testimony of the appellant Morris it could have been inferred that one of the purposes, perhaps the prime purpose of the pilgrimage was to have at least ten of the group jailed in Jackson. The length of time for remaining in jail was discussed. Arrangements in advance for bail bond and for counsel had been made, or so it could have been found. In one of the communications it was said:

---

[7] I further instruct you that if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Griffith and Nichols said defendants had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested, it is your duty to return a verdict for the defendants.

> "All in all, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for us when he said, 'About jail— Here I am, send me. I'm not brave but I'm obedient.'"

The evidence would have permitted a finding, not only that being jailed in Jackson was a possibility, but that the participants would go to Jackson for the purpose of procuring their jailing and would so conduct themselves as to assure the achievement of that result. We do not say that this evidence required such a finding; we say that it permitted it. If the appellants' claims can be defeated by a showing of a plan and purpose of being arrested and jailed, then the evidence was properly admitted. We think [fol. 666] that such a showing would preclude recovery and the question is presented by the appellants' specification of error next considered.

The remaining assignment of error is the denial by the trial court of the appellants' motion for a directed verdict on the issue of liability, leaving only the question of damages to the jury. In urging this point, the appellants rely upon *Nesmith* v. *Alford*, 5th Cir. 1963, 318 F.2d 110, cert. den. 375 U.S. 975, 84 S.Ct. 489, 11 L. Ed. 2d 420. In *Nesmith* the plaintiffs had been arrested and placed in jail. They sued police officers for malicious persecution, false imprisonment, and deprivation of civil rights. This court held that the plaintiffs, Nesmith and his wife, were entitled to a directed verdict as a matter of law as to liability on the common-law claim for false imprisonment and, as we read the court's opinion, on the civil rights claim. The false-imprisonment common-law claim is a state cause of action. The *Nesmith* case was decided under the law of Alabama. This case arises under the law of Mississippi. It is our considered view that under the law of Mississippi the appellants were not entitled to a directed verdict of liability on the false-imprisonment claim. As we have pointed out, there was evidence from which it might have been found that the appellants went to Jackson, not only contemplating the possibility of being jailed, but with a design and plan that they should be. If they had such a design and plan, are they entitled to recover damages for having accomplished their objective?

The question is not whether the appellants could lawfully dramatize their protests against racial inequality by [fol. 667] attempting to eat in a wrongfully segregated lunch room in a bus terminal of an interstate passenger carrier. It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program a planned arrest and confinement and then successfully rely upon such confinement as the basis for recovery in an action for damages for false imprisonment. Throughout the common law of torts the maxim, volenti non fit injuria, is applicable. It is applicable to false imprisonment. 35 C.J.S. 712, False Imprisonment § 46 c. one who has invited or consented to arrest and imprisonment should be denied recovery. *Hulberstadt* v. *Nelson,* 34 Misc. 2d. 472, 226 N.Y.S. 2d 100; *Greene* v. *Fankhauser,* 137 App. Div. 124, 121 N.Y.S. 1004; *Stork* v. *Evert,* 47 Ohio App. 256, 191 N.E. 794. The principles set forth in the recent case of *State* v. *Moore,* .... Miss. ...., 174 So. 2d 352, show a recognition of the rule as applicable in Mississippi, although under a factual situation different from the case before us. An earlier decision, and one more nearly in point on its facts, is *Williamson* v. *Wilcox,* 63 Miss. 335, where it was said, "For a purely private injury one cannot maintain a suit when he has consented to the act which produced the injury." Whatever the law may be in some jurisdictions,[8] we conclude that, under the law of Mississippi, to which we look for the governing common-law rules of law,[9] proof that the plaintiffs invited or consented to arrest and confinement precludes recovery for false imprisonment. Since, as is said in *Monroe* v. *Pape, supra,* "Section 1979 [42 U.S.C.A. § 1983] [fol. 668] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." We think the tort principle of volenti non fit injuria applies to the claim asserted for a civil rights violation under 42 U.S.C.A. § 1983 as well as to the common-law cause of action. For reasons elsewhere discussed in this opinion, we hold that the appellees are immune from liability for false imprisonment at common law but not from liability for violations of the Federal statutes on civil rights. It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment.

The judgment of the district court will be reversed and remanded so that the complaint and the action may be dismissed as to the appellee Spencer, and a new trial had as to the other appellees in accordance with this opinion.

REVERSED AND REMANDED.

---

[8] As in Alabama. See Nesmith v. Alford, 5th Cir. 1963, 318 F.2d 110.

[9] Questions as to liability under Civil Rights Acts are Federal questions to be determined by Federal Law. Nesmith v. Alford, supra, n. 8; 15 Am. Jur. 2d 453, Civil Rights § 67.

[fol. 669]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term, 1964

No. 21325

D. C. Docket No. 3315—Civil Action

ROBERT L. PIERSON, ET AL., Appellants,

versus

J. L. RAY, ET AL., Appellees.

Appeal From the United States District Court for the Southern District of Mississippi

Before: JONES and BELL, Circuit Judges, and HUNTER, District Judge.

JUDGMENT—October 25, 1965

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court so that the complaint and the action may be dismissed as to the appellee Spencer, and a new trial had as to the other appellees in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellees, Ray, Griffith and Nichols, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

October 25, 1965

Court Costs:

Docketing cause, etc. $25.00

Issued as Mandate: Nov. 16, 1965

[fol. 670] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 671]

SUPREME COURT OF THE UNITED STATES

No. ...., October Term, 1965

ROBERT L. PIERSON, ET AL., Petitioners,

vs.

J. L. RAY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—January 21, 1966

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 24, 1966.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 21st day of January, 1966.

[fol. 672]

SUPREME COURT OF THE UNITED STATES

No. ...., October Term, 1965

ROBERT L. PIERSON, ET AL., Petitioners,

vs.

J. L. RAY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—February 24, 1966

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby further extended to and including February 28th, 1966.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 24th day of February, 1966.

[fol. 673]

SUPREME COURT OF THE UNITED STATES

No. 1074, October Term, 1965

ROBERT L. PIERSON, ET AL., Petitioners,

v.

J. L. RAY, ET AL.

ORDER ALLOWING CERTIORARI—May 16, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 1155 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 674]

SUPREME COURT OF THE UNITED STATES

No. 1155, October Term, 1965

J. L. RAY, ET AL., Petitioners,

v.

ROBERT L. PIERSON, ET AL.

ORDER ALLOWING CERTIORARI—May 16, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 1074 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

I

Respondents Do Not Meet the Question as to Whether Congress Modified in any Way the Common Law Immunity of the Judiciary to Suits for Damages.

Respondents never deal with the real question before this Court -- what did the 1871 Congress do? References to Black Power, or Watts, or Martin Luther King, or Communist infiltration do not help at all. Perhaps those words -- and all the emotions that lie behind them -- would be relevant to what a 1966 Congress would be likely to do when faced with choices between the individual and the official. But the issue before this Court is the meaning of the 1871 Congress. And that Congress (as is shown in the portions of our brief which respondents never meet) intentionally and knowingly gave harsh remedies against state officials.

What did that Congress do about the common law immunity of judges? It overrode it for state judges, knowingly and over the explicit objections of opponents.

comma is recommended here

In many cases of statutory interpretation analysis of the debate merely indicates a few opinions as to meaning of ambiguous language. "The rest is silance." And so the Court is not helped much by such debate. But in the matter before this Court today, no speculation is required. The language is clear. Judges' liability is covered explicitly in the debate (as it had been in 1866). Everyone, opponents and proponents, said that judges would be liable. No doubt can seriously exist as to this fact. Whatever the merits may be for judicial immunity in other cases, it would be rewriting this law to find such immunity here.

We add that in our view this means liability for judges for knowingly or willfully depriving one of equal rights.

No argument is made, nor can it be made, that Congress has not the power to hold judges liable for knowing wrongs. No deep incursion into civil war history is needed to explain the mind of the earlier Congress. In just such cases as are before us today, certain local judges played their roles, together with the police, in denying equal rights. Whatever the facts, the police arrest and the judges convict. This is the wrong Congress intended to correct. We urge that that is the case before us and is encompassed within the intent of Congress.

capital C?

capitalize? ("Civil War" is always capitalized, both words, in this meaning of the War between the States)

Contrary to what respondents contend (brief p. 37), Police Justice Spencer does have to rely upon an absolute immunity from being sued for knowingly and willfully depriving persons of their constitutional rights. Petitioners' proof with respect to Judge Spencer was cut off by the trial court. The jury verdict was, of course, tainted by the admission of improper evidence. The decision of the Fifth Circuit was in effect, and by express statement, a ruling that the Police Justice was immune without regard to the allegations against him or what the proof might show.

3485402

II

Did Petitioners Consent to the Arrest ?

Consent to an illegal arrest is absurd on its face. An arrest is an intentional act by police officers. It is no more a consensual act to be arrested than it is consensual to be electrocuted at a later time in the arrest process.

While it is certainly true that Petitioners knew that they might be arrested no matter how peaceful they were, because of the way the police were acting in Jackson, the option was entirely that of the police. Petitioners had a right to be there in a peaceful manner. Being peaceful, they were nevertheless arrested. At this point, a brave man must face his responsibility. To have left this station after this clearly improper order of the police, when one is doing no wrong, would have been an act of cowardice. In every way, it would have continued to perpetuate the immoral practice of segregation. If people walk away at this, the immoral practice goes on. But knowing that the police will probably act improperly~~, as the higher court finds,~~ does not make the refusal to move an act of consent.

no ¶ One may consent to a variety of acts, such as batteries, but that was not the case here. Knowledge that they would be arrested ~~if they~~ should they refuse~~d~~ the illegal order of the police is hardly the consent that vitiates the wrong of the police, knowingly acting in response to the police stanchion, "white only," by order of the police.

The "plan and purpose" defense suggested by the Fifth Circuit ~~does~~ could not come into play until ~~the arrests themselves~~ (petitioners were arrested and ~~the arrests~~) are found to have been illegal. Consequently, most of what respondents say on that issue is beside the point. If the arrests were illegal, and if, as is conceded, the ministers did nothing to initiate the arrests other than to enter the terminal as an integrated group, then surely those who made the illegal arrest should not be free from liability because the persons arrested knew that they might be arrested (or even probably would be) ~~and~~ (No less is this true) even though they thought that an arrest might hasten the end of evil by exposing it.

§III

The Court Below Improperly Interpreted the Claim of Petitioners as Being Based Solely on the Later Declaration of Unconstitutionality in Thomas v. Mississippi.

The Court below (R.448-449) misinterpreted the nature of the claim of petitioners. We rely only in part on the fact that in Thomas v. Mississippi 380 U.S. 564 (1965). this Court reversed the convictions of the freedom riders, without oral argument, on the theory that the statute of Mississippi, as interpreted by their Courts, was unconstitutional. But we urge that equally significant, and ignored by the Court below, is the fact that at the trial de novo of Father Jones, the case was dismissed by Judge Moore at the end of the prosecution's case. In other words, there was no evidence which showed a violation of law, and therefore no basis for the arrests.

In this sense, the case before us now is different from Thomas v. Mississippi supra. In Thomas the convictions by Judge Spencer were upheld by Judge Moore in the trial de novo as well as in the higher appeals in Mississippi. But not so in the case before us. There was no evidence for the arrest in the first place in our case. We do not rely, solely as the Court below thought, then, on the statute being declared later unconstitutional, ~~but on the simpler situation~~ we urge that these defendants individually and in concert arrested and convicted petitioners and thus knowingly deprived them of equal rights guaranteed by the United States Constitution and particularly section 1983.

The evidence in this case, together with what we were allowed to show, upholds our contention that they were arrested solely for the purpose of protecting segregation in Mississippi. In front of the door to the bus station was the sign 'White Only by Order of the Police". In other words, if Negro and white clergymen entered together they were in violation of the police order. This explains the action of the police immediately after the clergymen entered the station. This accounts for the arrest. Nothing in the conduct of the clergyment can account for it. Furthermore,

this Court's decision in Thomas v. Mississippi, 380 U.S. 524 (1965), reversing at the time it granted certiorari, holds that peaceful persons, who have done nothing to incite others to violence, contrast Feiner v. New York, 340 U.S. 315 (1951), cannot be arrested because others indicate that they so dislike them that they might act violently against them. That was the issue in Abernathy v. Alabama, 380 U.S. 447 (1965), one of the two cases cited by this Court in Thomas (see Abernathy v. Alabama, 155 So.2d (Ala. Ct. Appeals 1962)* The purported basis for the arrests, therefore, has been held insufficient by this Court. When that is the case, the state official is liable for his actions even though, as with the "Judges of Elections" involved in Nixon v. Herndon, 273 U.S. 536, 539 (1927), the action was taken on the basis of a state statute, and/? even if, as in Smith v. Allwright, 321 U.S. 649 (1944), the state statute had earlier been upheld by this Court.

---

* Similarly in Cox v. Louisiana, 379 U.S. 536 (1965), this Court held not only that the Louisiana statute--this statute in haec verba-- was unconstitutionally vague, but also that the state could not arrest and punish unpopular but non-violent persons merely because "violence was about to erupt" from others.

√IV

Probable Cause for the Arrests Herein Has Improperly Been Admitted as a Defense to Plaintiff's Causes of Action.

As Prosser *On Torts* points out, Section 12 (3rd edition), much confusion exists as to the difference between false arrest and malicious prosecution. Malicious prosecution derives from the Common Law action founded in Case. It is an action directed not against the police officer carrying out the mandate of a Court to arrest a particular person, but against the person making the charge to the police. Probable cause is available to such a person when sued for damages.

But to the officer making an arrest without a warrant of a court, for an act allegedly committed in his presence, no defense of probable cause is available in a suit for damages. This is an action for false arrest and stems from the Common Law action of trespass.

The confusion discussed by Prosser is illustrated both by the Court below (R. 452) and our worthy opponents in their brief at page 23.

Our opponents cite, as they acknowledge, malicious prosecution cases to prove the availability of probable cause as a defense. But this is precisely the difference between false arrest (trespass) and malicious prosecution (case). The cases they cite are not false arrest actions, and so are irrelevant.

Before this Court is an action for false arrest. While the Mississippi Courts illustrate the general confusion as to these causes of action, analysis shows that the (Mississippi) cases where probable cause was allowed as a defense, the complaint alleged(s) malicious prosecution (whatever the term actually used). Nothing in Forsythe v. Ivey is to the contrary (cited by our opponents on pages ~~22-3~~ 21-2 of their brief). In that case nowhere does the Court state that probable cause is available as a defense in Law action for false arrest.

Whatever merit there may be to a defense of probable cause to an action based upon an arrest made under a statute later declared unconstitutional (which is one facet of our case) such is not applicable to arrests made, as in the case at bar, where the action is against arresting officers and where the arrested persons committed no wrongful acts (as found by the trial de novo).

The Court of Appeals, (R. 452), conceived of Petitioner's action as being based solely upon a statute later declared unconstitutional (see Thomas v. Mississippi, supra). But, of course, this has never been so, thus the citation of Golden v. Thompson, 194 Miss. 241, 11 So. 2d 206 in their opinion is also quite irrelevant to the question of arrests made without evidence, since it does not discuss probable cause as a defense in a case of this kind.

Petitioners'/? (plural)

INSERT V (p. 8a)

VI

Conclusion

For these reasons, as well as those set forth in our main brief, we request ~~grant~~ That the relief be granted as set forth in our main brief.

(insert)

V

Factual Statements in Respondents' Brief Requiring Correction.

1. Page 7: Petitioners had not at any time "congregated there standing in a group so as to block the stairs." Only subsequently to their being halted and then arrested did they stop inside the station. And accordingly any crowd that collected, if there was such, resulted from the police stopping and arresting them, and not from anything they had done.

2. Page 7: The reciting of the Lord's Prayer did not take place until after they were arrested, and thus could not be the cause of any crowd collecting before they were arrested.

3) Page 21: The reference to Section 2474 of the Mississippi Code has absolutely nothing to to with the case before us, since these arrests were not made under any Mississippi segregation statutes, and thus it is misleading for Respondents to say that they "do not place the non-liability of the officers here for false imprisonment solely (our emphasis) on this statute." Under Mississippi law they could place no basis as a defense to this cause of action on that statute.

4) Page 21: The sentence following the one quoted above, "probable cause is a common law definition to false imprisonment both in Mississippi and generally (emphasis theirs). As we have stated above, this is a highly inaccurate statement of the law.

Respectfully submitted,

Carl Rachlin, Esq.
Office & P.O. Address
150 Nassau Street
New York, New York 10038

Melvin Wulf, Esq.
Office & P.O. Address
156 Fifth Avenue
New York, New York

Attorneys for Petitioner

omit? (this is a title of courtesy, like "Mr.," usually added to another's name, not one's own)

postal zone number (as above)?

F.O.A. Schwarz, Esq.
Stephen M. Nagler, Esq.

Of Counsel

~~Response~~ Reply Brief For Pierson v Ray — c.c. Mel Wulf
Carl Rachlin

I. Respondents ~~do~~ not meet the question as to whether Congress modified the Common Law in any ~~way in what all concede in~~ the immunity of the judiciary to suits for damages.

II Respondents never deal with the real question before this Court-- what did the 1871 Congress do? References to Black Power, or Watts, or Martin Luther King or Communist infiltration help not at all. Perhaps those words-- and all the emotions that lie behind them-- would be relevant to what a 1966 Congress would be likely to do when faced with choices between the individual and the official. But the issue before this Court is the meaning of the 1871 Congress. And that Congress (as is shown in the portions of our brief which respondents never meet) intentionally and knowingly gave harsh remedies against state officials.

What did that Congress do about the common law immunity of judges? It overrode it for state judges, knowingly and over the explicit objections of opponents.

p. 3

In many cases of statutory interpretation analysis of the debate merely indicates a few opinions as to meaning of ~~the particular statute.~~ "The rest is silence." And so the Court is not helped much by such debate. But in the matter before this Court today no speculation is required. ~~The subject is covered [illegible]~~ Judges liability → ~~Both sides in the debate clearly discuss the issue~~ covered ~~in terms of the fact that judges will be liable under the statute.~~ No doubt can seriously a exist as to this fact. Whatever the merits may

ambiguous language.

Explicitly in the debate (as I had been in 1966). everybody, opponents & proponents, ~~knew~~ said that judges would be liable.

The language is clear.

be for judicial immunity in other cases, it would be rewriting this law to find such immunity here.

We add that in our view this means liability for judges for knowingly or ~~maliciously~~ willfully depriving one of equal rights. ~~Mere errors of judgment are not tortious under this statute.~~

No argument is made, nor can it be made, that Congress has not the power to hold judges liable for knowing wrongs. No deep incursion into civil war history is needed to explain the mind of the earlier Congress. In just such cases as are before us today, certain local judges played their roles, together with the police, in denying equal rights. Whatever the facts the police arrest and the judges convict. This is ~~what~~ the wrong Congress intended to correct. We urge that that is the case before us and is encompassed within the intent of Congress.

INSERT POINT 3 FROM FIRST DRAFT

CONSENT FROM p. 4

II The Court below (R.448-449) in ~~error~~ misinterpreted the nature of the claim of petitioners only in part. We ~~do not~~ on rely on the fact that in ~~Therior~~ Thomas v. Mississippi, 380 U.S. 564 (1965.) this Court reversed the convictions of the freedom riders without oral argument on the theory that the statute of Mississippi, as interpreted by their Courts, was unconstitutional. ~~Thus we do not rely as the Court below stated, on a later declaration of unconstitutionality.~~

X

It ~~should be remembered that nowhere in petitioners' complaint is reliance placed upon statutory unconstitutionality~~. More ~~important~~,

For S. J.

But we urge that equally significant ~~however~~, is the fact that at the trial de novo of Father Jones the case was dismissed ~~to~~ by Judge Moore at the end of the Prosecution's case. In other words, there was no evidence which showed a violation of law.

In this sense the case before us now is different from ~~Thar~~omas v. Mississippi supra. In ~~Thar~~omas the convictions by Judge Spencer were upheld by Judge Moore in the trial de novo as well as in the appeals in Mississippi. But not so in the case ~~so~~ before us. There was no evidence for the arrest in the first place in our case. We do not rely then on the statute being declared later unconstitutional, but on the simpler situation that these defendants individually __________, and in concert arrested and convicted petitioners and thus knowingly deprived them of equal rights guaranteed by the United States Constitution and particularly section 1983.

?

The evidence in this case, together with what we were allowed to show, upholds our contention that they were arrested solely for the purpose of protecting segregation in Mississippi. In front of the door to the bus station was the sign 'White Only by Order of the Police". In other words, if Negro and white clergymen entered together they were in violation of the police order. This explains the action of the police immediately after the clergymen entered the station. This accounts for the arrest. Nothing in ~~their conduct~~ the conduct of the clergymen can account for it

~~This is and has been our reliance.~~

Furthermore,

FROM PP
405 [illegible]

THIS SECTION FOLLOWS 1

III. Did Petitioners consent to the arrest? ~~On page 43 of their brief, the respondents urge that petitioners consented to their arrest.~~

??

~~How one~~ Consent~~s~~ to an arrest, illegal ~~or otherwise~~, is absurd on its face. An arrest is an intentional act by police officers. It is no more a consensual act to be arrested than it Isconsensual to be electrocuted at a later time in the arrest process.

That ~~there is error by respondents and the Court below on this point is clear~~. While it is certainly true that Petitioners knew that they might be arrested no matter how peaceful they were, because of the way the police were acting in Jackson, the option was entirely that of the police, ~~petitioners.~~ Petitioners had a right to be there in a peaceful manner. Being peaceful, they were nevertheless arrested. At this point, ~~A~~ brave man must face his responsibility. To have left this station after this clearly improper order of the police, when one is doing no wrong, would have been an act of cowardice. In ~~no way~~ every way ~~What is true more,~~ it would have ~~constituted~~ continued to perpetuate the immoral practice of segregation. If people walk away at this, the immoral practice goes on. But ~~without testing that practice.~~ knowing that the police will probably act improperly, as the higher court find, does not make the refusal to move an act of consent.

One may consent to a variety of acts, but that was not the case here. Knowledge that they would be arrested if they refused the illegal order of the police is hardly the consent that vitiates the wrong of the police.

The "plan and purpose" defense suggested by the Fifth Circuit does not come into play until the arrests themselves are found to have been illegal. Consequently, most of what respondents say on that issue is beside the point. If the arrests were illegal, and if, as is conceded, the ministers did nothing to initiate the arrests other than to enter the terminal as an integrated group, then surely those who made the illegal arrest should not be free from liablity because the persons arrested knew that they might be arrested and even though that an arrest might hasten the end of evil by exposing it.

Again, [illegible] did I find the 1871 Congress intend?

IV. Probable Cause as a defense to their action was incorrectly permitted ~~asserted~~ by the Court below (R. 452) and by Respondents (brief p. 20 et seq.)

The misunderstanding of the Court is clear from the face of its opinion. (take in single black type p.452 Of Record)

INSERT X From p.24 [illegible]

~~from this part of the opinion~~

~~It is clear that the Court is relating the defense of probable cause to the issue of a statute later declared unconstitutional.~~

Whatever merits ~~this may have~~ there may be to a defense ~~available~~ to the of probable cause in an action based upon a statute later declared unconstitutional, that is not the issue in the case before. The question here is whether or not when police officers make an arrest for the purpose of perpetuating an illegal system and not because Petitioners did any wrong, a defense of probable cause is available to those officers, when sued for false arrest.

assume only question

We urge that the ~~law~~ that the Courts below improperly allowed ~~permitted~~ and affirmed such a defense.

assumes was illegal

Probable cause is not a defense to an illegal arrest. The beief of Respondents is confused on this point, as can be seen from their statement "Cases holding that probable cause is also a defense to an action for malicious prosecution include:..." (Brief p.23) As Prosser indicates many courts and lawyers confuse malicious prosecution with false arrest. This is an action for false arrest.

In malicious prosecution the suit is against, not the person who made the arrest but, the one who made the complaint to the police. In false arrest the complaint is directed ~~to~~ against the actual arresting officer.

No action for false arrest lies against the officer who makes an arrest on another's complaint. He is merely carrying ~~the~~ out the mandate of the court. The complaint in such a case is against the one who signs the charge. Probable cause is available as a defense to this latter person, ~~but~~ the officer who makes an illegal arrest on his own initiative does not have a defense of probable cause.

What makes the problem somewhat difficult is that unknowing courts often confuse the these distinctly separate causes of action.

The cases cited by respondent on page 23 of their brief illustrate this confusion. Those cases are malicous prosecution cases although ~~but~~ sometimes the Courts refer to them improperly as false arrest cases. ¶ Further confusing the case here is the question of the right of an officer to make an arrest for an act committed in his presence (brief pp.22-3); no one disputes this right, least of all petitioners, But the question before the s Court ~~here~~ is not whether the officers had such a right, but whether in exercising su~~x~~ch a right he may act illegally with impunity. The answer to that is "no". If an officer makes an illegal arrest, he is responsible.

Assumes

The case of Forsythe v. Ivey (respondent's brief pp. 22-3) is closer but in no way contradicts the general rule that an officer is responsible for his illegal conduct. In Forsythe the man arrested had been acting in a manner which violated the statute involved. He was arrested. He proved that although he acted in this manner, he had ~~in~~ no intent to violate the statute. In other words, he had what might be called an an affirmative defense to an apparently proper arrest. It should be noted in Forsythe v. Ivey, relied upon by respondent, no where does the court say these officers could rely on probable cause. Their acts were based upon the conduct of the person involved.

But in the case before, there was nothing in the conduct of petitioners which any reasonable person could believe was wrongful, and therefore ~~Hume~~ the police could not prove the basic elements of the crimes as the trial de novo showed.

Analyses of the Mississippi cases does not reveal that a defense of probable cuase is available to an illegal false arrest and none of the cases cited by respondent uphold such a contention. It was therefore error to permit a defense of probable since it reflected an inaccurate statement of the Mississippi law by the Federal Court trying both a federal and a state issue.

IV PROBABLE CAUSE FOR THE ARRESTS HEREIN HAS IMPROPERLY ADMITTED AS A DEFENSE TO PLAINTIFF'S CAUSES OF ACTION

As Prosser On Torte points out section 12 (3rd edition), much confusion exists as to the difference between false arrest and malicious prosecution. Maicious Prosecution derives from the Common Law action founded in Case. It is an action directed not against the police officer carrying out the mandate of a Court to arrest a particular person, but against the person making the charge to the police. Probable Cause is available to such a person when sued for damages.

But to the officer making an arrest without a warrant of a court, for an act allegedly committed in his presence, no defense of probable cause is available in a suit for damages. This is an action for false arrest and stems from the Common Law action of trespass.

The confusion discussed by Prosser is illustrated both by the Court below (R.452 and our worthy opponents in their brief at page 23.

Our opponents cite, as they acknowledge, malicious prosecution cases to prove the availability of Probable Cause as a defense. But this is precisely the difference between False Arrest (trespass) and Malicious Prosecution (case). The cases they cite are not False Arrest actions, and so are irrelevant.

Before this Court is an action for False Arrest. While the Mississippi Courts illustrate the general confusion as to these causes of action, analysis shows that the cases where probable cause was allowed as a defense, the complaint alleged Malicious Prosecution. Nothing in Forsythe v. Ivey is to the contrary (cited by our opponents on page 22-3 of their brief). In that case nowhere does the Court state that probable cause is available as a defense in action for False Arrest

Whatever merit there may be to a defense of Probable Cause to an action based upon an arrest made under a statute later declared unconstitutional (which is one facet of our case) such is not applicable to arrests made, as in the case at bar, where the action is against arresting officers and where the arrested persons committed no woongful acts (as found by the trial *de novo*).

The Court of Appeals, R. 452, conceived of Petitioner's action as being based solely upon a statute later declared unconstitutional (see *Thomas* v. *Mississippi*, *supra*). But, of course, this has never been so, thus the citation of Golden v Thompson, 194 Miss. 241, 11 So. 2d 206, in their opinion is also quite irrelevant to the question of arrests made without evidence, since it does not discuss probable cause as a defense in a case of this kind.

V CONCLUSION

For these reasons as well as those set forth in our main brief, we request ~~grant~~ that the relief be granted as set forth in our main brief.

2e ↗ is this sentence correct?

Respectfully submitted

~~[illegible]~~ 80 [illegible]
150 Nassau

F.A.O. Schwarz Jr.
S.N.
Of Counsel?

Melvin L. Wulf
156 Fifth Ave
attys for Petitioners

What is exact form?
Atty for ?

file P v Ray

REPLY BRIEF FOR THE PETITIONERS *

1. Respondents' Statement of Facts in effect concedes at the outset everything it denies thereafter. Respondents agree that police officers Griffith and Nichols prevented the ministers from entering the restaurant. (Brief p. 7.) It was only afterwards, when the ministers had been brought back into the waiting room, that the officers, faced with what they called an ugly (or mumbling) crowd arrested the ministers without seeking in any way to calm or restrain the onlookers, who in any event stood around without taking any action, while Nichols left to call Ray.

2. Respondents never deal with the real question before this Court--what did the 1871 Congress do? References to Black Power, or Watts, or Martin Luther King, or Communist infiltration help not at all. Perhaps those words--and all the emotions that lie behind them--would be relevant to what a 1966 Congress would be likely to do when faced with choices between the individual and the official. But the issue before this Court is the meaning of the 1871 Congress. And that Congress (as is

---

* Robert L. Pierson, et al., petitioners in No. 79 and respondents in No. 94 are referred to herein as petitioners and J. L. Ray, et al., are referred to herein as respondents.

shown in the portions of our brief which respondents never meet) intentionally and knowingly gave harsh remedies against state officials.

What did that Congress do about the common law immunity of judges? It overrode it for state judges, knowingly and over the explicit objections of opponents.

Did that Congress leave open a defense by policemen that their action had been justified by a state statute which in fact was unconstitutional? No, the very purpose of the act was to give a remedy to persons deprived of their federal rights by state action, particularly when the action was wrapped in the form of legality.

Did that Congress really intend to protect from liability police officers who made illegal arrests because those arrested acted upon their belief that they would, if illegally arrested, stand as witnesses to good and so hasten the end of evil? The arrests were just as illegal whether the ministers deplored their arrests as symptomatic of sham justice in support of segregation or welcomed their arrests as a witness which would help focus attention on sham justice in support of segregation. What ~~remains~~ is crucial is that in so far as their confrontation with the police in the terminal is concerned, the ministers, as is conceded, did nothing to invite their arrest other than simply (to) be there as an integrated group.

X to page after Congress para

To p 2 of Rochlin

Contrary to what respondents contend (brief p. 37), Police Justice Spencer does have to rely upon an absolute immunity from being sued for knowingly and wilfully depriving persons of their constitutional rights. Petitioners' proof with respect to Judge Spencer was cut off by the trial court. The jury verdict was, of course, tainted by the admission of improper evidence ~~(see p. infra)~~. The decision of the Fifth Circuit was in effect, and by express statement, a ruling that the Police Justice was immune without regard to the allegations against him or what the proof might show.

4. The "plan and purpose" defense suggested by the Fifth Circuit does not come into play until the arrests themselves are found to have been illegal. Consequently, most of what respondents say on that issue is beside the point. If the arrests were illegal, and if, as is conceded, the ministers did nothing to initiate the arrests other than to enter the terminal as an integrated group, then surely those who made the illegal arrest should not be free from liability because the persons arrested knew that they might be arrested and even though that an arrest might hasten the end of evil by exposing it.

5. Much of what respondents say about the police officers' defense for acting in good faith upon probable

cause is also beside the point. ~~Though the evidence is strong that the police made the arrests to preserve segregation and not because others would attack the clergymen, it is only because of the unconstitutionality of the "disorderly conduct" statute that we urge that a directed verdict should be entered against the policemen on the issue of liability. Respondents' analysis of whether this Court has held the Mississippi "disorderly conduct" statute unconstitutional on its face or unconstitutional as applied also skirts the issue.~~ ~~At the [illegible],~~ this Court's decision in Thomas v. Mississippi, 380 U.S. 524 (1965), reversing at the time it granted certiorari, holds that peaceful persons, who have done nothing to incite others to violence, contrast Feiner v. New York, 340 U.S. 315 (1951), cannot be arrested because others indicate that they so dislike them that they might act violently against them. That was the issue in Thomas itself (see Thomas v. State, 160 So.2d 657 (1964); Farmer v. State, 161 So.2d 161 (1964). That was the issue in Abernathy v. Alabama, 380 U.S. 447 (1965), one of the two cases cited by this Court in Thomas (see Abernathy v. Alabama, 155 So.2d 586 (Ala. Ct. Appeals 1962).* The

---

* Similarly in Cox v. Louisiana, 379 U.S. 536 (1965), this Court held not only that the Louisiana statute--this statute in haec verba--was unconstitutionally vague, but also that the state could not arrest and punish unpopular but non-violent persons merely because "violence was about to erupt" from others.

To p. 3 of Rachlin

purported basis for the arrests, therefore, has been held insufficient by this Court. When that is the case, the state official is liable for his actions even though, as with the "Judges of Elections" involved in *Nixon v. Herndon*, 273 U.S. 536, 539 (1927), the action was taken on the basis of a state statute, even if, as in *Smith v. Allwright*, 321 U.S. 649 (1944), the state statute had earlier been upheld by this Court.

To p. 3

~~6. As for the diversity cause of action against the policemen, respondents concede that the question whether the "disorderly conduct" statute was only a sham basis for the arrests must be put before the jury on a retrial.~~

~~7. Though the point is not properly before this Court, not having been raised in respondents' certiorari petition, the Fifth Circuit did not err in its ruling that the trial court made reversible error in its admission of evidence. The ministers' agreement or disagreement with the May 1926 race relations program of the Communist Party could not possibly be relevant in their § 1983 action and can only be regarded as inflammatory and prejudicial.* The~~

~~* The Fifth Circuit was somewhat inconsistent in reversing because of the allowance of irrelevant and inflammatory questions about petitioners' beliefs and then opening the door to similar evidence through the "plan and purpose" issue which makes relevant the ministers' beliefs as to the effect their arrests might have upon segregation.~~

questions about the Freedom Riders were irrelevant not only, as said by the Fifth Circuit, because no connection was shown between them and petitioners but also because the support or not of the Freedom Riders by the ministers could have nothing to do with whether their arrests were illegal. The admission of other evidence not referred to by the Fifth Circuit, such as the identity of other clients represented by petitioners' trial counsel or whether petitioners believed in the abolition of laws prohibiting racial intermarriage was also ground for reversal.

POINTS INVOLVED

1. The Court erred in not granting the Motion for a Directed Verdict for the plaintiffs. (~~R. 156~~ 617-22)

2. The Court erred in admitting the evidence of prior racial strife, particularly evidence of so call freedom rides in and to the City of Jackson, Mississippi. (R. ~~[illegible]~~ 142 et seq.)

3. The Court erred in admitting the evidence of the reading of the purported statement from the Daily Worker and in not granting the Motion For A Mistrial. (R. 156)

4. The Court erred in admitting into evidence the letters of John Morris and evidence related to the letters concerning the Prayer Pilgrimage. (R. 280-373.)

5. The Court erred in denying admittance to the statements of Defendant Spencer (R. 512; 516; 520-21)

6. (see over)

ARGUMENT

Under the facts the plaintiffs were entitled to a directed verdict as a matter of law and the jury should have received the case to consider the amount of the damages alone, and we are of the opinion that the Court erred in this case in the following particulars: particularly since they were either acquitted or nolle prossed, nor was there any evidence of speech/pages against them. Pierson v. Ray, 386 U.S. 547

(1) The Court erred in not granting the Motion for a Directed Verdict for the plaintiff.

The facts in this case are undisputed in that the plaintiffs were restrained of their liberty under the probable imminence of force without ~~any legal~~ cause or justification therefor, since they were acquitted or nolle prossed. ~~This as~~ This a matter of law established the right of the plaintiffs to a directed verdict in their favor on the first count of their complaint.

In this regard ~~[illegible]~~ Nesmith and ~~[illegible]~~ v. ~~Mr.~~ Alford, ~~et al.~~, decided by this Court May 30, 1963, 318 F.2d 110, is virtually on all fours with the instant case. Mr. and Mrs. Nesmith ate lunch with people of both races in what was normally considered a Negro cafe in Montgomery, Alabama. During the time the Nesmiths and their group were eating a crowd gathered around the cafe. Neither the Nesmiths nor any member of their group did anything wrong inside the cafe. They were asked by the police to leave, they refused to leave and were arrested. Each was convicted in the lower Court, each

6. The charge of the Court below, we urge, is erroneous in that:

(a) (R.628-30) the Court charged the Jury ~~in the~~ in a manner such as to cause the jurors to consider the guilt or innocence of plaintiffs of the act of ~~dis~~ breach of the peace;

~~(b) (R.630) the Court charged the jury~~

(b) (R.634) Inferentially, the Court charged the jury, relating to [illegible] defendant police officers if they had probable cause to believe defendants guilty, singularly such a charge was [illegible] as to defendant [illegible] (R.63[illegible])

POINTS INVOLVED

1. The Court erred in not granting the motion for a Directed Verdict for the plaintiffs. (R. 617-22)

2. The Court erred in admitting the evidence of prior racial strife, particularly evidence of so call freedom rides in and to the City of Jackson, Mississippi. (R. 142 exseq.)

3. The Court erred in admitting the evidence of the reading of the purported statement from the Daily Worker and in not granting the Motion for a Mistrial. (R. 156)

4. The Court erred in admitting into evidence the letters of John Morris and evidence related to the letters concerning the Prayer Pilgrimage. (R. 280-373)

5. The erred in denying admittance to the statements of Defendant Spencer (R. 512; 516; 520-21)

ARGUMENT

6. The charge of the Court below, we urge, is erroneous in that:

a. (R. 628-30) the Court charged the Jury in a manner such as to cause the jury to reconsider thehguilt or innocence of plaintiffs of the act of this breach of the peace;

b. (R. 634) Improperly the Court charged the jury stating it could find for defendent police officers if they had probable cause to believe defendents guilty, similarly such a charge was given as to defendent Spencer (R. 635)

Under the facts the plaintiffs were entitled to a directed verdict as a matter of law and the jury should have received the case to consider the amount of the damages alone, and were are of the opinion that the Court erred in this case in the following particulars, particularly since they were either aquitted or nolle prossed, nor was there any evidence of such force against them. Garner v. Louisiana. 368 U.S. 157

(1) The Court erred in not granting the Motion for a Directed Verdict for the plaintiff.

The facts in this case are undisputed in that the plaintiffs were restrained of their liberty under the probbable imminence of force without any legal cause or justification therefor. Since they were acquitted or nolle prossed, as a matter of law this the right of the plaintiffs to a directed verdict in their favor on the first count of their complaint.

In this regard Nesmith v. Alford, decided by this Court May 30, 1963, 318 F.2d 110, is virtually on all fours with the instant case. Mr. and Mrs. Nesmith ate lunhh with people of both races in what was normally considered a Negro cafe in Montgomery, Alabama. During the time the Nesmiths and their group were eating a crowd gathered around the cafe. Neither the Nesmiths nor any member of their group did anything wrong inside the cafe. They were asked by the police to leave, they refused to leave and were arrested. Ech was convicted in the lower Court, each.................

It must not be forgotten that punitive damages were not sought in the complaint before us, so that not only was there a separation in time which should have kept out his evidence, but it was further irrelevant because such evidence, if admissible at all, can relate only to the issue of punitive danger, not present here.

(3) The Court erred.....

5. The refusal to admit the testimony of Judge Spencer was, in our view, reversible error since the testimony tended to show that the other defendants could arrest plaintiffs with impunity. Judge Spencer, in his capacity as a judge thought it wrong for a citizen to refuse to obey an order, no matter how improper (R. 516) even by a police man. Since both causes of action (R. 7) alleged defendants acted in concert, the refusal to admit this testimony denied plaintiffs the right to show that there was a concerted action, albeit unspoken, since defendants, all police officers, knew in advance, they could arrest plaintiffs with impunity. Judge Spencer came into his own court with intent to convict the plaintiffs here, and this is shown by his reading to plaintiffs here (defendants in his court) from the Canons of Religion of the Episcopal Church. This was also not admitted by Judge Mize (R. 536-8)

6. (a) These plaintiffs are innocent the cahrge ignores their acquittal or nolle Prosequе; furthermore the charge ignores the law established in Garner v. Louisiana et seq. 368 U.S. 157. By doing so the Court treated plaintiffs, as if they were defendants in a breach of the peace case.

SUMMARY OF ARGUMENT

A. In their cross-petition respondents did not contend that the Fifth Circuit erred in reversing the decision of the district court on the ground that improper questions (e.g., whether petitioners agreed with the views on race relations of a May 1928 issue of the Daily Worker) had been asked. The dispute between the parties relates to the terms of the Fifth Circuit's remand.

B. It was error to hold that police justice Spencer was immune from suit under 42 U.S.C. § 1983, despite the allegations and the proof (limited as it was by the trial court's exclusionary rulings) that ~~the Judge~~ he knowingly and intentionally acted individually and in concert with the police to punish petitioners for exercising their constitutional rights and to enforce the segregation laws, customs and usages of the Mississippi.

The statute provides for no immunities. Rather it applies to "every" person who acts under color of state law to deprive other persons of their constitutional rights. Members of Congress who opposed the statute did so specifically on the ground that it could subject judges to liability. Members of Congress who sponsored and supported the ~~bill~~ statute did so and said they did so in part because they were shocked at the defiance of law by racist judges. It is clear from the legislative history that Congress intended that judges, just as any other person, who knowingly and maliciously used their office to deprive persons of their civil rights should be liable.

The only court to consider that legislative history so held. Picking v. Pa.R. Co., 151 F.2d 240 (3d Cir. 1945).

Rider X

REASONS FOR GRANTING THE WRIT

I.

The Holding ~~Test~~ That a Police Justice Who Acts Under Color of State Law or Custom to Deprive Persons of Rights Secured by the Constitution and Laws of the United States is Immune from Liability under a Statute That Applies, Without Exception, to "Every" Person, That was Said by the Congress that Enacted it To Apply to Judges and that was Intended to Create a Remedy for Sham Justice in the Courts.

A. It is apparent from the legislative history of 42 U.S.C. § 1983, 17 Stat. 13, Section 1 of the Civil Rights Act of 1871, that Congress intended state court judges to be liable in damages if they acted under color of state law or custom to deprive a person of rights, privileges or immunities secured by the Constitution of the United States.

The statute provided for no exceptions. It made "any" person who so deprives "any" person liable in damages.*

---

* As altered by the revisor who prepared the Revised Statutes of 1878, the statute refers to "every" person who deprives "any" person of his rights. "Every" is just as inclusive as "any", but as originally enacted the parallelism of "any" in describing culprit and victim makes it even clearer that Congress did not intend to grant a sub silentio immunity to judges.

The revisor removed other language that textually made it clearer that no immunity was intended. As enacted, the section stated that any person shall be liable for depriving persons of their constitutional rights, etc., under color ~~or~~ of state law, custom, etc., "any such law, statute, ordinance, regulation, custom or usage to the contrary notwithstanding". (Emphasis

All the members of Congress who spoke on the problem explicitly stated that the section applied to judges. None disagreed. See Congressional Globe, 42d Cong., 1st Sess., 1871: Congressman Arthur, 3/31/71, p. 365, col. 3 - p. 366, col. 1; Congressman Sheldon, 3/31/71, p. 368, col. 1; Congressman Lowe, 3/31/71, p. 376, col. 1; Congressman Lewis, 4/1/71, p. 385, col. 1. Cf. Senator Thurman, 4/13/71, p. 217, col. 1 (Appendix).

Congress was concerned not with protecting good men against having to face charges of wrongdoing, but rather with defiance of law by mobs and officials including judges. ~~Rather~~ Congress was concerned that ~~they were faced with defiance and bloodshed where~~ "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress."*

---

supplied) to the words that are removed. ~~The underlined words, which were removed by the revisor, are a further indication that Congress wanted to create responsibility in damages without regard to any pre-existing state law providing, for example, for the immunity of judges.~~

The revisor lacked authority to alter the law substantively. See Revised Statutes of the United States, 1878, Preface, p. 4; Appendix, pp. 1092-1093; 19 Stat. 268, ch. 82 § 4 as amended by 20 Stat. 27, ch. 26. Title 42 has not been enacted into positive law.

* Congressman Lowe, 3/31/71, p. 374, col. 3.

~~They were~~ It was shocked at the record of many judges.* It was the breakdown of justice that gave rise to the need for legislation.

---

* See for example: Senator Sherman (summing up conference report) "Spreading terror and violence . . . no~~r~~w exist unchecked by punishment, independent of law, uncontrolled by magistrates." 4/19/71, p. 820, col. 2.

Congressman Rainey: "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity." 4/1/71, p. 394, col. 3.

Congressman Bentley: The remedy is needed because of "prejudiced juries and bribed judges". 4/3/71, p. 429, col. 2.

Congressman Beck [?]: The evidence before the select committee showed that "courts and juries refused them justice." 3/30/71, p. 354, col. 1.

Senator Osborn: "These men with hands stained with blood, hostile to every man who stood by his country during the war, determined by fair means or by foul, that loyal men shall not remain in power, ought not to sit upon juries and administer the laws enacted to punish their own crimes." 4/13/71, p. 654, col. 2.

If it be said that it is harsh or unwise to subject the state judiciary to suits alleging that they acted to deprive a man of his civil rights, the simple answer is that Congress in 1871 intended harsh remedies to check bloody terror, stubborn defiance and abuse of legal process. A bloody civil war had been fought. Congress had ousted state governments altogether and put in military governments. And then after terror against and injustice to the newly freed blackmen and the loyalists spread, Congress enacted the Civil Rights Act of 1871. Other sections of that Act were potentially far harsher than applying Section 1 to judges. See, e.g., Sections 3, 4 and 6.

The legislative history of Section 2 of the Civil Rights Act of 1866, 14 Stat. 27, U.S.C. § , also supports the conclusion that the 1871 Congress intended to cover the state judiciary. It does so because (1) the earlier Act was specifically referred to as a guide to the 1871 Act by the principal sponsor of the 1871 Act, Congressman Shellabarger, when he introduced the 1871 Act, Cong. Globe, 42d Cong., 1st Sess. 1871, 3/28/71, p. 317, col. 3, printed in Appendix, p. 68 and (2) the temper of the earlier Congress casts light upon that of the later Congress. President Andrew Johnson vetoed the 1866 Act after it was first passed on the ground, among others, that it subjected state judges to criminal liability for depriving persons of their civil rights. ~~including specifically subjecting negroes to different punishments because of their race.~~ Cong. Globe, 39th Cong., 1st Sess., 3/27/66, pp. 1679, 1680, col. 2. Congress re-enacted the Act over the President's veto and in so doing specifically stated that it was intended that judges who knowingly used their office to deprive persons of their civil rights should be punished.*

---

* See Senator Turnbull, Chairman of the Committee on the Judiciary, who led the effort to overrule the veto, at id., 4/4/66, pp. 1758-59, passim and at 1758, col. 3 in particular:

> "The assumption that State judges and other officials are not to be held responsible for violations of United States laws, when done under color of State statutes or customs, is akin to the maxim of the English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which the rebellion was hatched."

See also Senator Johnson, 4/5/66, p. 1778, col. 1; Senator Cowan, 4/5/66, p. 1783; Congressman Lawrence, 4/7/66, p. 1837, col. 1, the only speaker on the subject in the House who said:

> ". . . it is better to invade the judicial power of the State than permit it to invade, strike down, and destroy civil rights of citizens. . . . If penal enactments enforced by civil tribunals, can reach the same results, this is better than the exercise of military power."

B. The decision below conflicts with the decision of the Third Circuit in Picking v. Pa. R. Co., 151 F.2d 240 (3d Cir. 1945). Cf. McShane v. Moldovan, 172 F.2d 1016 (6th Cir. 1949). Picking is the only decision dealing with the question of judicial immunity under Section 1983 to consider any part of the legislative material referred to above. See 151 F.2d at 251, n. 12.*

C. This Court's decision in Tenney v. Brandhove, 341 U.S. 367 (1951), has been misapplied by several circuit courts of appeals (referred to in the preceding footnote) to support decisions similar to the decision of the court below. MORE TO FOLLOW

---

* After this Court's decision in Tenney v. Brandhove, 341 U.S. 367 (1951), holding that state legislators were immune from liability under (the predecessor of) Section 1983, the Third Circuit has queried whether it would still reach the result of Picking. See Ginsberg v. Stern, 251 F.2d 49 (3d Cir. 1958); Ginsberg v. Stern, 225 F.2d 245 (3d Cir. 1955). For ~~other~~ cases relying upon Tenney to hold that judges were immune, see Kenney v. Fox, 232 F.2d 288 (6th Cir. 1956); Tate v. Arnold, 223 F.2d 782 (8th Cir. 1955); Cauley v. Warren, 216 F.2d 74 (7th Cir. 1950); Francis v. Crafts, 203 F.2d 809 (1st Cir.), cert. denied, 346 U.S. 835 (1953).

II.

The Holding That Policemen Are Not Liable in Damages for Depriving Persons of Their Constitutional Rights If the Persons So Deprived Know That the Policemen Might Disregard Their Constitutional Rights But Nevertheless Chose to Exercise Those Rights

A. Under the decision below, the damage remedy of 42 U.S.C. § 1983 is unavailable to anyone who chooses to exercise his constitutional rights knowing that exercise of those rights may subject him to illegal treatment by the police.

The evidence "against" petitioners shows nothing more than that by way of a "plan and purpose" to be arrested. For petitioners did nothing to initiate arrest other than to enter the bus terminal as an integrated group. Their orderly conduct has not been disputed.

If, as the Court below found, the arrests were improper under 42 U.S.C. § 1983, surely the police who made the improper arrests should not be immune from responsibility because they happened to arrest persons who intentionally challenged the segregation customs of Mississippi. Quite the contrary. Surely those who act to implement the Constitution--or to dramatize the fact that it is being ignored--are not thereby deprived of the benefit of laws designed to implement the Constitution.

B. The decision below does not, of course, concern petitioners alone. A civil remedy for damages is a device to substitute law for force. To say that those who are at the forefront of the civil rights movement are to be denied the right to obtain damages for deprivation of their civil rights removes one more safety valve from a situation where the rule of law is already endangered. Similarly, to tell policemen that they are free from future personal responsibility for illegally arresting those who knowingly challenge segregation or those who seek to focus attention upon injustice scarcely makes more likely the voluntary observation of the Constitution.

C. Although the decision of the Court below that is under discussion in this section is not technically a final judgment, the impact of that decision upon this case and upon civil rights supporters and policemen generally makes it appropriate that this Court grant certiorari to review this decision as well as the final judgments discussed in the other sections of this petition.

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review non-final decisions. See *Larsen v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 685, n. 3 (1949); *Land v. Dollar*, 330 U.S. 731, 734, n. 2 (1947); *United States v. General Motors Corp.*, 323 U.S. 373, 377 (1944).

The decision below is fundamental to the future conduct of this case, to avoid multiplicity of appeals. It is fundamental to the future conduct of policemen. It is fundamental to the present and past rights of scores of others who sought to exercise their constitutional rights in the face of official opposition. It should be reviewed by this Court now.

III.

Taking the Issue of Whether the Police Relied upon a Statute in Good Faith Away From the Jury

Assuming that the court below was correct in deciding that it is the law in Mississippi (contrary to most jurisdictions) that a police officer is not liable for false arrest when he makes an arrest in reliance upon a statute that is subsequently held unconstitutional, it was nevertheless improper to hold that the state law cause of action against the policeman should be dismissed. There remains a jury question as to whether the arrest was really in reliance upon the statute or whether the police really arrested petitioners because they were an integrated group and used the provoking a breach of the peace statute as a sham justification for the arrest.

Petitioner's proof was that there were no threats from others in the bus station. The police testimony itself indicated their aim to preserve racial separation and was weak and conflicting on the issue of whether there was in fact an "ugly" mob. In any event, the police admitted that they made no effort whatsoever to calm others in the bus station. And there was no evidence that there was any danger of a breach of the peace in the restaurant which the police prevented the ministers from entering though they could have kept out those who supposedly were hostile to the ministers.

The Mississippi Supreme Court Decision in

Golden v. Thompson,
194 Miss. 241, 11 So. 2d 906 (1943), cited by the court below to support its decision that the state law cause of action against the police officer should not be retried in fact requires that the police at least act in "good faith reliance" on the statute that subsequently is declared invalid. It is for a jury to decide whether the police acted in good faith. See *e.g.*, *Miller v. Stinnett*, 257 F.2d 910 (10th Cir. 1958). No ~~where did the plfs allege that police relied~~

Here again a narrow ~~integration~~ interpretation, this time of state law, can have widespread effects upon many persons other than the ministers and these policemen.

[illegible]

"every" person who commits such an act shall be liable in damages, and (2) was thought by the Congress that enacted it to apply to such conduct by such judges.

2. Whether police officers are ~~immune from liability~~ not liable for damages under 42 U. S. C. §1983 for acting under color of state law and custom to deprive persons of rights secured by the United States Constitution and laws because those persons had reason to believe that police officers might arrest and jail them illegally in order to preserve segregation but nevertheless chose to exercise their constitutional right to travel as an integrated group.

3. Whether, if under state law police officers are not liable in damages for false arrest when the "breach of the peace" statute under which they purported to make the arrest had not yet been judicially declared unconstitutional, there does not remain a jury issue as to whether this statute was used as a sham justification for the arrest.

Statute Involved

The statute involved is Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. §1983.

As printed in Title 42, the Section reads:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured at law, suit in equity, or other proper proceeding for redress."

~~QUESTIONS PRESENTED~~

~~LEAVE 12 LINES~~

INSERT Rider 3

Proceedings Below

Petitioners brought suit in the United States District Court for the Southern District of Mississippi, Jackson Division, against three policemen and one police justice of Jackson, Mississippi. The suit was for damages under (a) 28 U. S. C. §1343 alleging a cause of action under 42 U. S. C. §1983 and (b) 28 U. S. C. 1332 alleging diversity of citizenship and a cause of action for false arrest and imprisonment under Mississippi law. Judgments in favor of defendants-respondents were entered upon a jury verdict.

Upon appeal, the Fifth Circuit (1) reversed the judgment as to the policemen with respect to the federal cause of action under 42 U. S. C. §1983 but remanded with instructions that plaintiffs should not be permitted to recover if they knowingly went to a place where travelling as an integrated group would subject them to illegal arrest, (2) directed that the state law cause of action against the policemen should be dismissed and (3) held that the police justice was immune from suit under both causes of action and directed that the complaint against him should be dismissed.

Statement

A. Petitioners' Arrest and Confinement.

Petitioners are three white and one Negro Episcopal clergymen.* As members of a "Prayer Pilgrimmage" they sought, in September 1961, to visit church institutions in both the South and the North, from New Orleans to Detroit, in order to deliver and dramatize their "message to the Church that the Church must become, in every phase of its life, that which by the grace of God it is—one Holy Fellow-

~~Negro was~~

---

* The three whites were Robert L. Pierson, James G. Jones, and John B. Morris. The

(Negro was James P. Breeden.)

3 ~~15 F.2d at~~; R

The police conceded that they made no effort whatsoever to arrest the persons whom they claimed were in an ugly mood (or mumbling at a distance).* Nor did they ask such persons to leave, or even say a word to them or caution or calm them in any way (R. 495, 584-585, 611-612). That the real aim of the police was to enforce segregation customs and laws is also revealed by the police testimony (1) that it was wrong for whites and Negroes to be together in bus stations or anywhere (R. 485, 502); (~~2~~3) that a Negro had never gone into that part of the station and not been arrested (R. 500); and (~~3~~2) that "if [the ministers] did it again today" they would again arrest them (without any reference to a supposed ugly crowd) (R. ~~49~~ 491); and

Ruled?

B. Petitioners' Conviction by ~~Respondent~~ Spencer.

Police Justice

Two days after their arrest, petitioners were tried ~~in the court of~~ by defendant Spencer, a police justice serving at the pleasure of the Mayor of Jackson (R. 272). Petitioners were tried upon a "General Affidavit" of defendant Ray which said that petitioners:

> ". . . with intent to provoke a breach of the peace, did then and there willfully and unlawfully congregate with others in or around . . . a place of business engaged in selling or serving members of the public, and did then and there fail or refuse to disburse and move on as then ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi." (R. 110-111; 238-239; 390.)

---

* The police never testified how many such persons there were. The only testimony police testimony on the number of persons in the station was that 12 to 15 had been there prior to the arrival of the ministers and 20 to 25 followed the ministers in.

Shows was police abandoned
[illegible]

prosecution
police

Seven months after petitioners' convictions, the ~~State~~ sought and obtained leave to amend the affidavit in respect of the three white petitioners (Pierson, Morris and Jones), ~~by~~ (1) striking the words "with intent to provoke a breach of the peace, did then and there wilfully and unlawfully" and substituting "under such circumstances that a breach of the peace might be occasioned thereby, did then and there", (2) adding the words "wilfully and unlawfully" prior to the words "fail or refuse" and (3) substituting "disperse" for "disburse". (R. 117-119, 238-239, 390).

The [illegible] changes were

The affidavit in its original and its amended form was written in terms of Section 2087.5 of the Mississippi Code, which had been enacted in 1960. Section 2087.5 subsequently was declared unconstitutional by this Court (at the same time as it granted the petition for certiorari) in a case similar to petitioners' which also arose from Police Justice Spencer's court. *Thomas* v. *Mississippi,* 380 U. S. 564 (1965). Cf. Cox v. Louisiana, 379 U.S. 536, 547-551; *Edwards* v. *South Carolina,* 372 U. S. 229 (1963).

Defendant Spencer convicted petitioners of violating that statute and gave them the maximum sentence—four months in jail and a $200 fine.

Defendant Spencer admitted there had been no evidence that petitioners were disorderly in any way (R. 511-512). He also admitted that he had never researched the law ~~as to whether a person was ever entitled to~~ decline to obey an improper order of a police officer and ~~he~~ assumed that ~~one~~ a person was never entitled to ~~do so~~ (R. 516). On the subject, that and

① [illegible]

Instead, at petitioners' trial, he read to them an article of religion from the Episcopal book of Common Prayer dealing with the duty of priests to obey civil authorities

~~* [illegible] refused with respect to petitioners~~
~~Breaden [illegible] [illegible] [illegible]~~
~~affidavit of Civil [illegible] [illegible] any [illegible]~~

3~~75 F.2d at~~; R.

The police conceded that they made no effort whatsoever to arrest the persons whom they claimed were in an ugly mood (or mumbling at a distance).* Nor did they ask such persons to leave, or even say a word to them or caution or calm them in any way (R. 495, 584-585, 611-612). That the real aim of the police was to enforce segregation customs and laws is also revealed by the police testimony (1) that it was wrong for whites and Negroes to be together in bus stations or anywhere (R. 485, 502); (3) that a Negro had never gone into that part of the station and not been arrested (R. 500); and (2) that "if [the ministers] did it again today" they would again arrest them (without any reference to a supposed ugly crowd) (R. ~~49~~ 1491); and

B. Petitioners' Conviction by ~~Respondent~~ Spencer.

Two days after their arrest, petitioners were tried ~~in the court of~~ by defendant Spencer, a police justice serving at the pleasure of the Mayor of Jackson (R. 272). Petitioners were tried upon a "General Affidavit" of defendant Ray which said that petitioners:

> "... with intent to provoke a breach of the peace, did then and there willfully and unlawfully congregate with others in or around ... a place of business engaged in selling or serving members of the public, and did then and there fail or refuse to disburse and move on as then ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi." (R. 110-111; 238-239; 390.)

Police Justice

(R 505)

---

* The police never testified how many such persons there were. The only testimony police testimony on the number of persons in the station was that 12-15 had been there prior to the arrival of the ministers and 20 to 25 followed the ministers in

Shows even police abandoned [illegible]

prosecution ~~police~~

Seven months after petitioners' convictions, the ~~State~~ sought and obtained leave to amend the affidavit in respect of the three white petitioners (Pierson, Morris and Jones)* ~~by~~ (1) striking the words "with intent to provoke a breach of the peace, did then and there wilfully and unlawfully" and substituting "under such circumstances that a breach of the peace might be occasioned thereby, did then and there", (2) adding the words "wilfully and unlawfully" prior to the words "fail or refuse" and (3) substituting "disperse" for "disburse". (R. 117-119, 238-239, 390).

The [illegible] changes were

The affidavit in its original and its amended form was written in terms of Section 2087.5 of the Mississippi Code, which had been enacted in 1960. Section 2087.5 subsequently was declared unconstitutional by this Court (at the same time as it granted the petition for certiorari) in a case similar to petitioners' which also arose from Police Justice Spencer's court. *Thomas* v. *Mississippi*, 380 U. S. 564 (1965). Cf. Cox v. Louisiana, 379 U.S. 536, 547-551; *Edwards* v. *South Carolina*, 372 U. S. 229 (1963).

Defendant Spencer convicted petitioners of violating that statute and gave them the maximum sentence—four months in jail and a $200 fine.

Defendant Spencer admitted there had been no evidence that petitioners were disorderly in any way (R. 511-512). On the subject, He also admitted that he had never researched ~~the law as to whether a person was ever entitled to~~ decline to obey an improper order of a police officer and he assumed that ~~one~~ a person was never entitled to ~~do so~~ and (R. 516). that

① a portion of the deposition that the trial court excluded from evidence

Instead, at petitioners' trial, he read to them an article of religion from the Episcopal book of Common Prayer dealing with the duty of priests to obey civil authorities

---

~~* The [illegible] with respect to petitioner Breeden [illegible] affidavit of Chief [illegible]~~

so as to eliminate the allegation that petitioners had intended to provoke a breach of the peace.

Chief Ray testified that the sign outside of the Terminal waiting room said "White Only -- by order of the Police Department."

and gave his opinion that petitioners were "guilty" of violating that article (R. 532-539).

Rider 9 questioned before Judge Spencer

Police Justice Spencer had tried all the cases (some 50 trials and 300 defendants) which had previously arisen out of the efforts of integrated groups to use the Jackson bus terminal (R. 517-518).

C. The Subsequent Decision at a Trial De Novo That There Had Been No Evidence Against Petitioners.

Petitioners' convictions were vacated after trials *de novo* in the County Court of Hinds County. Petitioner ~~Jones~~ Breeden was the first to be retried. After the City offered its evidence, ~~Jones~~ Breeden moved for a directed verdict of not guilty; the County Judge granted the motion and adjudged him not guilty (R. 481-482). The County Court then granted the prosecutor's motion to *nol. pross.* the cases against the ~~two~~ three ? other petitioners on the grounds that the evidence against them was the same as the evidence against Jones (R. 234-235, 245, 396).

RIDER 9A

D. The Trial and Appeal of This Action.

The jury found for respondents after the trial court had permitted petitioners to be examined about the following matters:

1. Whether they agreed with the Communist Party's ~~demands dealing with~~ program race relations as set out in quotations from the *Daily Worker* of May 26, 1928 (R. 155-165);

2. Whether they believed in the abolition of all laws prohibiting intermarriage of persons of the Caucasian and the Negro races (R. 415-417, 160);

~~; denying the allegation that the ministers intended to provoke a breach of the peace~~

~~¶ Thereafter the prosecutor [illegible] moved to [illegible] Chief Ray's affidavit against the remaining petitioners.~~

3. Whether they supported the "Freedom Ride Invasion" of Jackson (R. 214-219) and whether they supported the purposes and activities of those groups that call themselves Freedom Riders (R. 142-149, 225-253, 260-261, 268, 357, 405, 407, 409, 412-412);

4. Whether their attorneys in Police Justice Spencer's court had previously represented many Freedom Riders (R. 416);

5. Whether their trial counsel was the general counsel for the Congress of Racial Equality (CORE) (R. 419, 229-230, 317); and

6. Whether petitioner Pierson had suggested any corrections in a magazine article that had referred to a New York newspaper headline stating "Arrest Son-in-Law of Governor Rockefeller as 'Freedom Rider'" (R. 425-426).

In addition, the trial court permitted nine letters written by Petitioner Morris to prospective and actual members of the Prayer Pilgrimage to be introduced ~~and extensively~~ used in cross-examination concerning the aims of the Prayer Pilgrimage ~~and~~ the beliefs of Father Morris (R. 249-270, 278-362).
and

On the basis of the letters, the defense contended (1) that the ministers knew that travelling as an integrated group might subject them to arrest and jailing and (2) that the ministers prepared for the possibility that some of their members would be arrested and jailed.

On appeal, the Fifth Circuit Court of Appeals held the following:

RIDER 3

QUESTIONS PRESENTED

1. Whether proof that a group of ministers chose to exercise their constitutional right to travel as a racially integrated group despite their knowledge that doing so might subject them to illegal arrest renders policemen who arrested them free from liability in damages under 42 U.S.C. § 1983 where it is shown that:

(a) the arrest was in fact made to enforce the segregation laws, customs or usages of the state of Mississippi whereby the bus terminal waiting room in which ~~they~~ the ministers were arrested was marked "White Waiting Room Only--by Order of the Police Department" and had never been entered by a Negro without his being arrested;

(b) the persons arrested were completely orderly;

(c) the statute that purportedly was used to justify the arrests made guilty of "disorderly conduct" persons who congregate with others in a public place "with intent to promote a breach of the peace or under circumstances such that a breach of the peace might be occasioned thereby" and who refuse to move on upon request of a law enforcement officer;

(d) it was subsequently held that there was no evidence under that statute against the ministers; and

(e) that statute was subsequently held unconstitutional on its face by this Court.

2. Whether a m~~i~~unicipal police justice (a) alleged to have conspired with police officers to have white and Negro ministers arrested, convicted and sentenced to jail for the sole purpose of enforcing the segregation laws, customs, or usages of the State of Mississippi, and (b) whose conviction of the ministers for congregating in an orderly fashion but under such circumstances that other persons might cause a breach of the peace was subsequently reversed at a trial de novo at the close of the prosecution's case on the ground that there was no evidence against the ministers, is immune from a suit for damages under 42 U.S.C. § 1983, which (1) provides without exception that "every" person who commits such an act shall be liable in damages and (2) was intended by the Congress that enacted it to apply to such conduct by such judges.

3. Whether, ~~if~~ assuming that under Mississippi law, which is applicable in the diversity cause of action, the police officers are not liable in damages for false arrest on the ground that they made an arrest ~~when the "disorderly conduct"~~ under a "disorderly conduct" statute ~~under which they purported to make the arrest was not~~ which was subsequently declared unconstitutional, ~~until after the arrest, would not~~ the police officers nevertheless ~~be am~~ would be liable if the arrest was in fact made to enforce the segregation laws, customs and usages of Mississippi or there was no probable cause to believe the "disorderly conduct" statute had been violated so that a jury issue remains as to the reasons for and circumstances of the arrest.